of said Act, instituted an investigation into and concerning the reasonableness and otherwise lawfulness of the special regulations covering descriptions, marks, inspection and delivery, and the handling of claims thereunder, in connection with the transportation by common carrier by railroad, of shell eggs from, to and between points in the United States. As a result of said order, the Commission docketed upon its formal docket a proceeding entitled "*Special Regulations, Eggs*", and assigned docket number 30030 to such proceeding, the decision of which is reported at 284 I.C.C. 377, which decision is appended [fol. 4] hereto as Exhibit A and which is attacked in this proceeding.

6. During the pendency of said proceeding, the carriers filed additional tariffs proposing a further revision of the provisions of the rules of the Consolidated Freight Classification covering the shipment of shell eggs by railroad, and the handling of claims filed as to such shipments. Upon request of various shippers of shell eggs, the Commission suspended said tariffs for investigation and assigned the same Docket No. I. & S. 5792. The provisions of said tariff, which were suspended by the Commission as aforesaid, are fully set forth in Appendix C of Exhibit A hereto. The said proceeding under such suspension order was thereafter consolidated with the hearings in I.C.C. Docket No. 30030 above described. The two causes proceeded to conclusion in a single record and were disposed of in a single decision.

7. That following the initiation of the proceeding bearing I.C.C. Docket No. 30030, the Commission held hearings at Chicago, Ill., Brooklyn, N.Y., and Washington, D.C. Following the consolidation of such proceedings with I. & S. Docket No. 5792, above described, the Commission held further hearings upon the consolidated record of the two proceedings at Los Angeles, Calif., and Chicago, Ill. Following the conclusion of the hearing last above described, briefs were filed as permitted by the Commission and a proposed report of the Examiner was issued, to which exceptions were duly taken and replies thereto filed. Oral argument was had before the Commission and thereafter on February 4, 1952, the Commission duly entered its decision above described and hereunto attached.

8. Thereafter, and on April 21, 1952, plaintiff, a member of the National Poultry, Butter and Egg Association and of the Pacific Dairy and Poultry Association, acting through such association, joined with the New York Mercantile Exchange, Zenith Codley Co., Inc., Fairmont Foods Company, Armour & Company, Wilson & Co., Inc., The Cudahy Packing Company, and Swift & Company (each of whom was a party to the original proceeding before the Commission) in a petition to the Commission asserting the existence of fundamental errors in findings of fact, in conclusions of law, and in the decision of the Commission above described, and requesting that the Commission reopen the proceedings for reconsideration and grant additional oral argument, and that the order in said proceedings be postponed pending such reconsideration by the [fol. 5] Commission. The Commission, by orders dated March 17, and April 22, 1952, entered orders postponing the effective date of its order in the prior proceeding to July 1, 1952. But on May 19, 1952, the Commission entered its order denying the request of the petitioners above named for reconsideration, thereby refusing to reconsider any of the errors set forth in said petition which errors also constitute the basis of this Complaint.

9. That following the decision of the Commission, and pursuant to the approval and permission contained therein, the railroads of the United States filed with the Commission Supplement No. 10 to the Consolidated Freight Classification, which Supplement contained a rule almost identical in words and figures to the rule set forth in Appendix C of Exhibit A attached hereto. The entire rule so filed with the Commission is set forth as Exhibit B attached hereto, and by reference hereby made is incorporated herein as though the same were fully set forth herein. The Commission accepted said Supplement and on May 2, 1952, the said Supplement containing said rule became effective, and the provisions thereof as reissued in Supplement No. 17 on August 7, 1952, remain in effect as of the date of bringing this suit.

10. That as applied to the shipment of eggs by railroad, said tariff rule set forth in Exhibit B hereto purports to free any railroad transporting eggs from any and all liability whatever for loss of eggs transported, even when

caused deliberately, wilfully, maliciously and intentionally by the agents of the carrier, or when caused by the gross negligence of the carrier, in the following instances:

A. In the instance of any case of eggs repacked at the rail origin point of the shipment, so long as the total eggs destroyed in such standard case does not exceed eleven in number.

B. In the instance of any case of eggs not repacked at the said rail origin point, so long as the total eggs destroyed in any one case do not exceed eighteen in number.

C. In the instance of any shipment, whether repacked at point of shipment or not, but which has been subjected to Federal inspection immediately prior to shipment, where such inspection establishes that there were no damaged eggs contained in such [fol. 6] shipment, so long as the total number of eggs destroyed in any case contained in such shipment does not exceed four in number.

That in all cases where the damage to eggs in transit exceeds eleven per case as to shipments repacked at origin, or eighteen per case as to shipments not repacked at origin, or four per case as to such government-inspected shipments, the said tariff purports to limit the liability of the railroad for such damage only to the number of eggs in each standard case exceeding eleven, eighteen or four, as the case may be, even though the entire loss resulted from the intentional, wilful and malicious act of the railroad agent, or from the gross negligence of the railroad handling the shipment.

That in addition to freeing any railroad transporting eggs from any and all liability for loss of eggs transported, the tariff purports to free it from all liability for necessary labor and material expenses incurred in reconditioning the damaged cases at destination which do not contain more than eleven, eighteen, or four smashed, leaking or cracked eggs, even though the fillers and flats holding the eggs were in perfect condition at time of shipment, and even in instances where the damage or destruction to packing materials results from the gross negligence of the carrier.

11. By reason of such exemption from, and limitation of,

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SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

(Pages 1 to 836)

Supreme Court of the United States

OCTOBER TERM, 1954

No. ~~171~~ 6

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~172~~ 7

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT AND COMPANY, APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~282~~ 11

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~283~~ 12

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT AND COMPANY, APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NO. 171 & NO. 172—FILED JUNE 25, 1954

NO. 282 & NO. 283—FILED AUGUST 13, 1954

PROBABLE JURISDICTION NOTED OCTOBER 14, 1954

liability for damage to eggs caused by the carrying railroad, the said rule contained in said tariff is unlawful and in violation of Section 20 (11) of the Act, and the same should be cancelled and set aside.

12. That by Section 12 (1) of the Act, the Commission is required to execute and enforce all of the provisions of the Interstate Commerce Act. Section 20 (N) of said Act requires that every railroad shall publish and permit to remain in effect only such tariffs and schedules as are in compliance with that Section. Section 6 (1) of the Act requires every railroad to publish tariffs which shall plainly state every rule and regulation applicable to any shipment which in any wise changes or affects the value of the service to the shipper. That the said tariff now in effect contains a rule which openly misstates the liability of a railroad to a shipper of eggs, imposed upon such railroad by law.

13. That in approving and accepting the tariff now in effect, the Commission failed and refused to enforce and observe the provisions of the Act as it is required [fol. 7] by law to do in that it accepted and permitted to exist a tariff setting aside and nullifying specific provisions of the Act, viz Section 20 (11), and openly misstating conditions imposed by law upon such railroads, in violation of Section 6 (1) of the Act. That plaintiff is entitled to a mandatory injunction directing and commanding the Commission to strike from its files the unlawful tariff above described.

14. That even if said tariff now in effect were in all respects lawful, the decision of the Commission, the findings of fact, and conclusions contained therein are unlawful and void for the following reasons:

A. The decision contains findings of fact which are supported by no substantial evidence, and findings of fact contrary to the undisputed evidence of record.

B. The decision contains conclusions of law not supported by the findings of fact made, and not supported by any findings of fact supported by substantial evidence.

C. The decisions contains conclusions based upon findings of fact which are wholly irrelevant and im-

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 171

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 172

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT AND COMPANY, APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 282

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 283

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT AND COMPANY, APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

COMPLAINT—Filed January 20, 1953

Comes now the plaintiff, and for cause of action, alleges as follows:

1. The plaintiff, Utah Poultry & Farmers Cooperative, is a cooperative corporation organized under Title 2, Utah Code Annotated 1943 (Chapter 1, Title 3, Utah Code Annotated 1953), relating to the incorporation of farmers' cooperative marketing associations; that it is engaged in marketing eggs and poultry for its producer patrons and in furnishing farm supplies; that it has its principal place of business at 1800 South West Temple, Salt Lake City, Utah, and some twenty-four branch places of business throughout the State of Utah and one in the State of Idaho; that it ships the eggs and poultry marketed by it as far west as the Pacific Coast and as far east as the Atlantic Coast; that in doing so, it is a shipper of rehandled, rehandled and repacked, and storage eggs from its various places of business in Utah and Idaho to various destinations in other states from the Atlantic to the Pacific Coasts; that plaintiff was a party of record to the proceedings before the Interstate Commerce Commission, hereinafter described, in which there was issued the decision of the Interstate Commerce Commission on Special Regulations, Eggs, set out in volume 284 of the reports of the Interstate Commerce Commission at page 377 thereof on February 4, 1952.

2. This action is brought to annul and set aside a decision of the Interstate Commerce Commission, in a proceeding entitled "*Special Regulations, Eggs*", decided by the Commission on February 4, 1952, and reported in Volume 284 of the published reports of the Commission's decisions at page 377 thereof. This Court's jurisdiction of this action is specifically provided by Section 1336 of Title 28, United States Code Annotated. A full and complete copy of said decision, including the appendices

thereto, is hereunto attached, marked "Exhibit A", and by reference hereby made is incorporated herein as though the same were fully set forth at this point. This action is also brought for mandatory injunction requiring [fol. 2] said Commission to cancel and set aside a certain tariff approved by it in the aforesaid decision, which tariff contains essential provisions which contravene, annul and set aside rights and liabilities specifically created by the Interstate Commerce Act (Title 49, United States Code Annotated) and particularly by Section 20 (11) thereof. By approving and accepting such tariff, the Commission has failed and refused to obser e and enforce the aforesaid provisions of said Act as specifically required by Section 12 (1) thereof. This action, therefore, is one arising under an Act of Congress regulating commerce, and jurisdiction thereof is vested in this Court by the provisions of Section 1337 of Title 28, United States Code Annotated; and there being involved the interpretation and application of the provisions of a Federal Statute, viz Section 20 (11) of Title 49, United States Code Annotated, and the action being one seeking to compel agency action alleged to be unlawfully withheld, and requesting this Court to hold unlawful and set aside agency action, findings and conclusions alleged to be arbitrary, capricious and not in accordance with law, jurisdiction is also provided by Section 1009 of Title 5, United States Code Annotated.

3. That wherever the word "Act" appears herein, the same shall be construed to mean Part I of the Interstate Commerce Act, Title 49, United States Code Annotated, Sections 1 to 22, both inclusive; and wherever the word "Commission" is used herein, same shall be construed to mean the Interstate Commerce Commission created by said Act. That wherever the word "railroad" is used herein, same shall be construed to mean a common carrier of property in interstate commerce by railroad, subject to the provisions of the Act above described. That wherever the word "shipment" is used herein, same shall be construed to mean a shipment of property moving in interstate commerce as the same is defined in said Act.

4. That for many years, and at all times involved herein, all railroads in the United States have duly filed with the

Commission, pursuant to the requirements of said Act, a tariff known as the Consolidated Freight Classification, the provisions of which were generally applicable to shipments of property moving over the lines of any such carrier by railroad. Such Consolidated Freight Classification on and after July 19, 1919, contained a provision published pursuant to the findings of the Commission in [fol. 3] *National Poultry, Butter & Egg Asso.* vs. *N.Y.C.R.R.Co.*, 52 I.C.C. 47, governing the transportation and the settlement of claims for loss of, or damage to any shipment of shell eggs by railroad. As originally published, the said tariff provisions contained special and individual rules applicable only to shipments of shell eggs destined to Boston, Mass., New York, N. Y., or Philadelphia, Pa., and other and different rules applicable to shipments made to other destinations. Subsequent to the original publication of said tariff rules and on October 25, 1919, the exception existing as to Philadelphia was cancelled by the publishing railroads and the rule generally in effect throughout the remainder of the United States became applicable to shipments destined to Philadelphia. On February 10, 1941, the special rule applicable to shipments to Boston and New York was cancelled by the publishing railroads and thereafter the general rules based upon the aforesaid findings of the Commission in the proceeding above described became applicable to all shipments of shell eggs made throughout the United States. The rule so applied is fully set forth in Appendix A to Exhibit A hereunto attached.

5. On July 24, 1948, the Defendants, by publication of tariff as required by the Act, amended the above described rule in the Consolidated Freight Classification and published and made effective a new rule which is set forth as Appendix B to said Exhibit A attached hereto. Prior to the effective date of said new rule, certain shippers of shell eggs requested the Commission to exercise its powers under Section 15 (7) of the Act, and to suspend said tariff for the purposes of investigation. The Commission refused to exercise its powers of suspension under said Section 15 (7), but coincidentally with such refusal, and on its own motion, by order dated July 23, 1948, the said Commission, acting under the provision of Section 13 (2)

material to any issue in the proceeding because of which the decision of the Commission is unlawful and void. The existence of said decision lends a color of authority for and legality of the tariff provisions now in effect as above described notwithstanding that the same are unlawful and in violation of Section 20 (11) of the Interstate Commerce Act.

15. That by reason of the facts aforesaid, the railroads asserting the legality of said tariffs and of the said decision are regularly refusing to pay claims filed by shippers for damages to shipments of eggs caused entirely by the carrier originating the shipment or by carriers over whose lines the property passed in all cases where the damage does not exceed the limits described in Paragraph 10 hereof; and in all cases where the damage exceeds the limits there described, are refusing to pay claims except for damages to the extent they exceed such limits, even in instances where the entire damage resulted entirely from the misdeed of the railroad or its agents.

16. That under the provisions of Section 20 (11) of the Act, and of the uniform bill of lading prescribed by the Commission, whose terms are applicable to all shipments, an action at law for the recovery of damages for the loss [fol. 8] of property transported must be filed within two years and one day from the date of disallowance thereof. That unless the said tariff and decision are set aside, plaintiff and all other shippers in the United States suffering damage to shipments of eggs will be compelled to file actions at law seeking the recovery provided by Section 20 (11) in numerous jurisdictions, and that a multiplicity of suits involving the legality of such tariff and decision will result unless the same be amended and set aside. That plaintiff and all other shippers of eggs in the United States will therefore be subjected to unnecessary and unwarranted hardship, and to unnecessary, voluminous, unwarranted and expensive litigation, solely because the Commission has permitted a tariff to be filed and to remain in effect which violates Section 20 (11) of the Interstate Commerce Act, and, by said decision, has lent a color of legality thereto; all of which can be avoided by annulling and setting aside said decision, and by an

order commanding the Commission to cancel, set aside and strike from its files the unlawful tariff hereinbefore described.

Wherefore, plaintiff prays:

(1) That a writ of subpoena issue immediately out of and under the seal of this court, and be directed to said defendants, the United States of America and the Interstate Commerce Commission, requiring said defendants, on a day certain therein to be specified, to be and appear before this court and to answer this complaint, but not under oath, answer under oath being hereby expressly waived;

(2) That this court direct that due and proper notice of this complaint issue and be served forthwith as prescribed by statute;

(3) That a court constituted as required by Sections 2284 and 2325 of Title 28, United States Code Annotated, be convened and that said court so constituted and convened shall hear this complaint upon due and legal notice to defendants;

(4) That upon the filing of this complaint, the judge of this court shall notify the chief judge of this circuit, with request that said chief judge shall designate two other judges, of whom at least one shall be a circuit judge, to hear and determine this complaint;

(5) That, upon the final hearing of this complaint, the court so constituted shall enter a decree permanently sus- [fol. 9] pending, enjoining, setting aside and annulling the said order of said Commission; that this court shall issue a mandatory injunction directing and commending said Commission to strike from its files the provisions of Supplement No. 17 to the Consolidated Freight Classification, above described; that this court shall construe the statutes involved and determine and state the correct principles of law controlling the disposition of said complaint before the Commission; shall determine the jurisdiction of the Commission in the premises; and shall also determine what, if any, findings of fact in said decision of the Commission are erroneous, or irrelevant and immaterial to the disposition of the complaint before the Commission; and that this court shall thereupon remand said complaint to

the Commission for further hearing and decision by the Commission in accordance with the controlling principles of law determined by this court; or find and determine that plaintiff is entitled to a further hearing before the Commission and a decision therein not inconsistent with the decision of this court;

(6) That plaintiff have and recover of the defendants the proper costs of said suit; and

(7) That plaintiff have such other and further relief in the premises as may be lawful and as may be deemed by this court to be fit and proper.

(S.) Irwin Clawson, Attorney for Plaintiff, 141 East 2nd South Street, Salt Lake City, Utah.

(File endorsement omitted.)

[fol. 10] EXHIBIT A

26194

INTERSTATE COMMERCE COMMISSION

No. 30030[1]

Special Regulations, Eggs

Submitted October 26, 1951. Decided February 4, 1952

1. Schedules under investigation in No. 30030 providing special regulations governing descriptions, marks, inspection, and delivery of eggs, and the handling of claims thereunder found not to result in unreasonable or otherwise unlawful practices. Investigation discontinued.
2. Schedules under suspension in Investigation and Suspension Docket No. 5792, providing special regulations governing descriptions, marks, inspection, and delivery of eggs, and the handling of claims thereunder found not justified. Suspended schedules ordered canceled without prejudice to the filing of new schedules in conformity with the findings herein.

C. H. Johns for the Interstate Commerce Commission.

James P. Canny, Rowland L. Davis, Jr., G. H. Durvas, W. S. Jensen, Alfred A. Knowlton, J. Edgar McDonald, Harold H. McLean, John F. Reilly, A. J. Stilling, John R. Wall, William F. Zearfaus, and William F. Zinger, for respondents.

E. M. Brannon, F. W. Denniston, and Raymond Krebill for the Secretary of the Army of the United States, Chas. B. Bowling, Charles W. Bucy, Walter D. Matson, and Leon Schilt for the Secretary of Agriculture of the United States, and Charles A. Root for the Public Service Commission of Utah, protestants.

P. J. Arturo, Fred T. Barrett, Earl W. Benjamin, Paul E. Blanchard, Willard K. Brown, Lloyd C. Dell, Harry

[1] This proceeding also embraces Investigation and Suspension Docket No. 5792, Damage Tolerance on Shell Eggs.

D. Greene, Harrison F. Jones, James Kenny, Roy L. McDonough, Donald A. Merken, Robert C. Neill, W. G. O'Barr, T. R. Phillips, Ross Dean Rynder, Louis R. Simpson, E. K. Slusser, Robert H. Smith, John P. Staley, W. M. Tuohy, and Drue Williardson for other protestants.

REPORT OF THE COMMISSION

MITCHELL, *Commissioner:*

Exceptions and replies thereto were filed by respondents and certain protestants to the report proposed by the examiners, and the issues were argued orally. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been given consideration and found not justified.

[fol. 10-1] By order dated July 23, 1948, division 2, on its own motion instituted an investigation into and concerning the reasonableness and otherwise lawfulness of the special regulations governing descriptions, marks, inspection and delivery, and the handling of claims thereunder in connection with the transportation, in interstate or foreign commerce, of shell eggs from, to, and between points in the United States, with a view to making findings and prescribing reasonable rules, regulations, and practices relative to such transportation.

During the course of the hearings in the title proceeding, respondents, by schedules filed to become effective May 12, 1950, proposed to change in certain respects, as hereinafter specifically indicated, the special regulations then under investigation. Upon protests by the Department of the Army, the United States Department of Agriculture, State regulatory bodies, and numerous shipper organizations, operation of the schedules was, by order entered by division 2 on May 11, 1950, in Investigation and Suspension Docket No. 5792, suspended to and including December 11, 1950. Respondents have voluntarily deferred the effective date of these schedules to and including April 11, 1952. As the suspension proceeding pertains to the same matters as the initial investigation, it was consolidated therewith for hearing and disposition. The schedules under investigation in the title proceeding, as well as those included in I. and S. No. 5792, are published in the consolidated freight

classification and apply or are designed to apply Nation-wide.

All common carriers of property by railroad parties to the schedules under investigation were made respondents. Copies of the orders of investigation and notice of hearings were served upon them and upon all protestants. Hearings were held at Chicago, Ill., Brooklyn, N. Y., Washington, D. C., and Los Angeles, Calif.

Prior to July 24, 1948, the rules and regulations in the consolidated classification governing descriptions, marks, inspection, and delivery of eggs, in carloads and less than carloads, in all territories, and the handling of claims thereunder, hereinafter referred to as the prior regulations, were those which became effective July 15, 1919, pursuant to the findings in *National Poultry, Butter & Egg Assn. v. N. Y. C. R. Co.*, 52 I.C.C. 47, decided January 21, 1919, hereinafter referred to as No. 10012.

Under those rules and regulations, as originally published, no inspection of the contents of cases containing eggs was permitted at Boston, Mass, New York, N. Y., or Philadelphia, Pa., when (1) no cases showed external evidence of damage, (2) cases had not been recoopered in transit, (3) no part of the lading had shifted, or (4) [fol. 10-2] the lading had not been transferred in transit from one car to another. At all other points, consignees were permitted to lift the lids of 25 percent of the cases, not exceeding 20 in 1 shipment, and examine the top layers for damage. If damage to the contents was disclosed by such inspection, the rules permitted further examination of the top layers of other cases selected by the consignee. All cases containing damaged eggs were then set aside for reconditioning.

On October 25, 1919, shell-egg shipments delivered by rail at Philadelphia became subject to the 20-case inspection rule. No further change was made until February 10, 1941, when the rules theretofore applicable at all other destinations were made effective on shipments delivered at Boston and New York. With the exception of certain changes, not here important, the above rules were not basically changed until July 24, 1948.

The prior regulations provided that shippers of eggs should be required, among other things, to note on the

shipping order and bill of lading the character of the shipment, namely, whether current receipts, rehandled current receipts, rehandled and repacked eggs, storage packed eggs, checks or dirties, and the number of cases of each. Rehandled and repacked eggs were defined as those rehandled and repacked in new standard cases with new flats, fillers, and cushions, in accordance with the classification requirements. Eggs of the other descriptions indicated were not specifically defined in those regulations.

Upon arrival of shipments of eggs at destination, the consignee or his representative had the right, before the eggs were removed from the possession of the carrier and under the supervision of the carrier's representative, of performing the inspection provided for in the classification, for the purpose of ascertaining whether such shipments contained damaged eggs. If such examination showed no evidence of damage, it was considered complete and final for the entire shipment and a receipt indicating that the shipment was in good order was required of the consignee. If, however, such examination disclosed damage, the consignee had the right further to examine the shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases was then conducted by a representative of the carrier and by the consignee or his representative, and the extent of the damage, together with the facts pertaining thereto noted on the paid freight receipt or other document and signed jointly by the inspectors. Prior to February 10, 1941, the carriers, in making such notations in connection with shipments to New York, recognized such damage only as to cases showing external evidence thereof.

In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and re- [fol. 10-3] packed eggs, if not more than 5 percent of the eggs was damaged, hereinafter sometimes referred to as a tolerance, no claim would be allowed. Where the damage exceeded 5 percent, claims were allowed for all damage in excess thereof if the examination developed carrier liability. Each case was used as a unit, provided information was furnished the carrier by joint inspection or otherwise of the damage in each container. In other instances the entire consignment was used as the unit.

In the adjustment of claims for damage, the notation made jointly on the paid freight receipt or other document by the inspectors was considered conclusive as to the extent of the damage. No expense incurred by the consignee in the ascertainment of damage was allowed. In case, however, of the carrier's liability, actual and necessary charges for labor and material in reconditioning the damaged cases, including the damaged contents, were borne by the carrier. If, however, by such reconditioning the value of any damaged case or its contents became enhanced, the increased value was credited to the claim.

The prior regulations, to the effect that no claim for damage would be allowed in connection with shipments of eggs if not more than 5 percent of the eggs was damaged, applied only in connection with eggs described on the shipping order and bill of lading as current receipts, and rehandled current receipts. On shipments of storage packed eggs, storage packed dirties, and rehandled or repacked eggs, claims for actual damage, as evidenced by the notation made on the paid freight receipt or other document would be allowed. Those regulations reflected the findings in No. 10012, at page 59, which reads:

> A tariff rule applied to shipments of current receipts or rehandled current receipts that asserts that claims for broken eggs will not be considered or paid by the carrier when the number of broken eggs in any case or crate is not in excess of 5 percent of the contents of such case or crate not found to be unreasonable or unlawful.

It was also found in that proceeding that a like restriction in respect of claims for damages to shipments of eggs would be unreasonable and unlawful except when applied to current receipts or current receipts rehandled.

Under the prior regulations, the carriers were paying large claims for damage to shipments of shell eggs. In an effort to improve that situation certain changes in the regulations were proposed. Schedules containing those changes were protested by certain parties, but we permitted them to become effective, without being suspended, effective July 24, 1948. The investigation in the title proceeding concerning their lawfulness was, however, insti-

tuted. Under those schedules, hereinafter referred to as the present regulations, provisions for notation on the shipping orders and bills of lading as to the character [fol. 10-4] of the shipments and for inspection of such shipments somewhat similar to those in effect prior to July 24, 1948, were reestablished. The schedules provided, however, that the descriptions "rehandled and repacked" and "storage packed eggs" shall apply only to eggs rehandled and repacked, and graded and sorted, respectively, at packing plants or storage warehouses located at point of origin of the rail shipment; and that the terms "current receipts" or "graded" shall apply to eggs not complying with the above descriptions. In the prior regulations "rehandled and repacked" and "storage packed eggs," in respect of which claims for actual damages had been permitted, were not restricted to shipments handled and repacked, and graded and sorted at point of origin of the rail shipment. Those descriptions included such shipments irrespective of the point of origin. Shipments thus described could originate at points other than the point of origin of the rail shipment, and, could be hauled to that point by truck or other mode of conveyance. As a result of these restrictions, eggs not originating at point of origin of the rail shipment but which previously had been included within the descriptions "rehandled and repacked" and "storage packed eggs" are now included within the terms "current receipts" or "graded" eggs. If an examination of the top layer of 25 percent, with a maximum of 20 cases, of a shipment of eggs thus described shows 5 percent or less damage, it shall be considered complete and final for the entire shipment, and a good-order receipt shall be required of the consignee.

Respondents were relieved under the prior regulations from paying claims for damage on eggs described as current receipts or rehandled current receipts when the damage was 5 percent or less. Claims were paid, however, on eggs of those descriptions when the damage exceeded 5 percent, and on eggs of all other descriptions to the actual extent of such damage properly authenticated. Under the present regulations claims for actual damage apply only on rehandled and repacked and storage packed eggs when such operations are performed at point of origin of the

rail shipment. On eggs of all other descriptions respondents pay no claims for damage when the examination, heretofore indicated, shows that such damage is 5 percent or less.

As stated, during the course of the hearings in the title proceeding the respondents filed new schedules, hereinafter referred to as the proposed regulations the operation of which was suspended in I. and S. No. 5792. These schedules contain proposed special regulations governing descriptions, marks, inspection, and delivery of eggs somewhat similar, except as hereinafter indicated, to those contained in the prior and present regulations. Under them the shipper must insert, among other things, on the [fol. 10-5] shipping order and bill of lading the type of package (wooden or fiberboard), and the number of packages entirely containing checked, crated, stained or dirty eggs. These regulations provide that upon arrival of shipment at point of delivery the consignee or his representative shall have the privilege of opening each package, at no expense to the carrier, except where the examination establishes carrier liability, and of initially examining the contents thereof; provided, however, on notice by the carrier, that such examination shall be in the presence of the carrier's representative. If any package contains eggs having shell damage for which the carrier may be deemed responsible, the contents of such packages shall be jointly inspected by the consignee and the carrier or their authorized representatives. Any damage to the eggs shall be jointly recorded by the consignee and the carrier, and such joint record shall be conclusive as to the nature and extent of damage.

The proposed regulations further provide that on eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where physical damage to the eggs at destination does not exceed 4 percent of the contents of the packages containing damaged eggs; and that on eggs placed in packages at points other than the rail point of origin no claim shall be allowed where the damage at destination does not exceed 6 percent. Where the damage on such respective shipments exceeds 4 and 6 percent, claims shall be allowed for all damage in excess of

these amounts if investigation develops carrier liability. The proposed regulations also provide that where bona fide certificates of Federal and State egg-inspection agencies showing the physical damage to eggs, determined at the rail point of origin of the shipment immediately prior to tender thereof for rail transportation, indicate the actual shell damage to eggs placed in packages at the rail point of origin to be other than 3 percent, and to eggs not placed in packages at the rail point of origin to be other than 5 percent, the percentages of actual damages as shown on such certificates, plus 1 percent, shall be used in lieu of the 4 and 6 percent, respectively, heretofore indicated.

The proposed regulations differ principally from the present regulations in the following respects: (1) They authorize the opening by the consignee of each package in the shipment as compared with the opening of not to exceed 20 cases under the present regulations, except where an examination of these cases shows damage in excess of 5 percent; and (2) they substitute tolerances of 4 and 6 percent, respectively, on shipments of eggs of all descriptions whether placed in packages at the rail point of origin of the shipment or at points other than the rail point of origin, in lieu of the provisions under the present regu- [fol. 10-6] lations of a tolerance of 5 percent on eggs other than those rehandled and repacked at the point of origin of the rail shipment, with no tolerance as to the latter.

The requirements under the present regulations that shippers must note on the shipping order and bill of lading the character of the shipment, namely, whether current receipts, graded, rehandled and repacked, or storage packed, and the definitions of those descriptions are eliminated in the proposed regulations. The physical condition of the eggs at the time they are offered for transportation, rather than specific descriptions, should be the basis of the regulations governing claims incident to such transportation. The proposed regulations are designed to accomplish needed changes in the present regulations based upon evidence obtained during the course of the investigation in the title proceeding.

Respondents are not attempting by the proposed regula-

tions to limit carrier liability, in that they are directed against losses due to the inherent nature of shell eggs rather than against losses caused by the carriers. These regulations merely establish a means to determine the amount of damage existing at the time the shipment is received by the carrier and the amount of damage resulting solely during transportation because of the inherent nature of the shipment.

The prior, present, and proposed regulations, respectively, are shown in appendixes A, B, and C hereto.

Eggs are graded according to size, color, interior quality, and shell condition. The grades as to size are determined by weight, expressed in ounces per dozen, and are classified as jumbo, extra large, large, medium, and small. Colors are designated as white, brown, and mixed. Interior quality is indicated by designations AA, A, B, and C. The factors considered in shell condition are shape, cleanliness, and soundness of structure. Shell-structure defects are described as check, blind check, crown check, stained or dirty, and loss, and are of primary importance in these proceedings.

The term "current receipts" is used to describe run-of-the-nest eggs as received at the farms, ranches, and packing plants, before candling, grading, segregation of damaged eggs, and repacking. Such eggs contain every variety of size, color, and grade, as well as a proportion of checked, broken, cracked, leakers, stained, and dirty eggs. Protestants take the position that such eggs are not shipped commercially, particularly to the New York market.

The terms "rehandled and repacked," and "storage packed," as defined in the present regulations, apply only to eggs which have been examined, sorted, and repacked at the point of origin of the rail shipment in new standard cases, with new flats, fillers, and cushions. The rehandling [fol. 10-7] and repacking may be for the purpose of segregating the eggs as to size, color, quality, cleanliness, and condition. Commercially the term rehandled and repacked applies to eggs which have been classified solely by observation but not by candling. But the term storage packed applies to eggs which are candled generally for quality, grading, blind checks, and other shell defects not

visible to the naked eye. This term is commonly used by the trade to indicate that the eggs have been carefully graded for quality, condition, and cleanliness.

The term "graded" as used in respondents' present regulations is coupled with current receipts, and includes all eggs except those which are rehandled, repacked, graded, and sorted at the rail point of origin of the shipment, and from which all broken, cracked, checked, stained, and leaky eggs have been removed. That description was in response to the request of shippers who did not desire to describe their eggs as current receipts. In recent years the trend has been for farmers to sell their eggs on a graded rather than on a current receipts basis. Grading includes all operations necessary to classify fully the quality in any given lot of eggs. As used in the present regulations the term graded does not necessarily denote the commercial grade of eggs.

The term "checked" applies to eggs with small cracks in the shells but in which the shell membrane is not broken, and as a result there is no leakage. The check occurs after the egg is laid and cannot readily be detected by observation alone. In many instances a recent or new check is almost indiscernible. Most checks are, however, detected in candling, because in that process the candlers handle individual eggs and click them together. If the check is not recent it is readily visible to the naked eye, because there is an apparent widening of the crack as a result of the absorption therein of moisture. A "blind check" is a shell defect which occurs before the egg is laid and which has acquired a new coating of shell material over the defective part. Such defects are discernible only by candling. Obviously the trade uses the term blind check to include also those checks which can be detected by clicking but not by minute observation. Checked eggs are weak in their structure and defective, but blind checks may be included in storage packed eggs.

The term "crown check" applies to an indentation in the top of the egg as packed. Eggs are always packed vertically with the large end up. That end contains an air cell between the shell and the membrane. If elongated eggs are packed and there is a jar from above or the case is walked on after it is loaded in a car, crown checks would

ordinarily occur. This type of damage is not proportionately large, in that elongated eggs are not being shipped commercially. The very large or so-called [fol. 10-8] "jumbo" sized eggs when shipped are packed in special cases. A crown check does not necessary cause a leaker.

Stained eggs are those on which the shell is stained or soiled from contact with broken or leaking eggs. Specifically they consist of eggs with no adhering dirt and with no more than a combined total of one-eighth of the shell surface stained or soiled. Dirty eggs are those with adhering dirt, or with more than one-eighth of the shell surface stained or soiled. Leakers are eggs on which the shells and membranes are broken to the extent that the contents thereof exude. Eggs described as "loss" are those which are inedible because of being broken, contaminated, or containing blood spots or other foreign matter.

In the process of packing, all visible checked, cracked, leaky, stained, and dirty eggs, and those containing blood spots or other interior defects are removed.

Except in rare instances, eggs are not examined by the railroads for concealed damage at point of origin. Without considering such damage, a bill of lading indicating that the shipment is in good order is given to the shipper. Upon arrival at destination all damage found by inspection is presumed to have occurred in transit. As a practical matter the inspection report of the Railroad Perishable Inspection Agency, hereinafter referred to as the inspection agency, is almost the equivalent of a draft against the carrier. Under this method of settling claims the railroads are practically obligated to pay for all damage to eggs found at destination, even if the shipment contained damaged eggs at the time it was delivered to the railroad at point of origin.

In the inspection at destination the consignee's representative examines every egg in the cases disclosing damage. Stained, leaky, or cracked eggs are removed and repacked into other cases containing similarly damaged eggs. Completely damaged eggs are replaced by good ones. In all such repacked cases new fillers and flats are furnished by the consignee. When the damage claim is

filed it includes the cost of labor and materials used in repacking the eggs in addition to the cost of the damage. Approximately 25 percent of the total amount claimed for damage to eggs is apportioned to labor and materials. The cost of lifting the lids of the cases in a bad-order car is not allowed in respect of claims for damage.

Claims for damage to shipments of shell eggs by rail have reached substantial amounts during the past decade and longer. Those claims accrue principally in connection with shipments to destinations in trunk-line and New England territories. Generally there has been no increase [fol. 10-9] in the damage claims on shell eggs moved by rail to other territories such as the South, the Southwest, and the Pacific coast. The damage claims on shipments to New York, to which the greater part of the evidence in these proceedings was directed, exceed those to any other point in the country. But large claims also accrue on shipments to certain points in eastern seaboard territory such as Baltimore, Md., Newark, N. J., Philadelphia, and other points.

The following table shows, for the year 1940 through 1949, the number of cases of shell eggs delivered at New York; those figures restated in carloads on the basis of 600 cases per car, except in 1949, when a basis of 480 cases was used; the number of claims filed; the total amount of such claims; and the average amount per car handled and per claim.

Period	Number of cases	Number of cars	Number of claims	Amount	Average of claims	
					Per car	Per claim
Year 1940	4,552,143	7,586	2,116	$71,652	$9.44	$33.86
Year 1941	4,072,916	6,788	1,965	59,889	8.82	30.48
Year 1942	3,543,986	5,906	2,599	111,469	18.87	42.89
Year 1943	4,105,083	6,841	3,744	302,875	44.27	80.89
Year 1944	3,776,708	6,294	3,907	475,714	75.58	121.75
Year 1945	5,900,090	9,833	(1)	(1)	(1)	(1)
Year 1946	5,520,299	9,200	8,257	1,577,671	171.48	191.07
Year 1947	4,568,309	7,616	6,911	1,505,472	197.67	217.83
Year 1948 [2]	3,204,027	5,341	3,808	871,441	163.16	228.84
Year 1949 [2]	1,273,922	2,828	2,072	491,542	173.81	237.23

[1] Information not available.
[2] Figures shown apply only in connection with the first 10 months of those years.

The average amount of the claims filed on shell eggs to New York has increased from $30.48 in 1941 to $237.23 in 1949. A somewhat similar situation is reflected in the

claim per car, which was $8.82 in 1941, increased progressively to $197.67 in 1947, decreased to $163.16 in 1948, and again increased to $173.81 in 1949. The volume of movement was highest in 1945 when the equivalent of 9,833 carloads on the basis of 600 cases per car was terminated.

The number and amount of the damage claims are not directly related to the shipments terminated in the same period because of the interval between the time of delivery of a shipment and the time the claim thereon was paid. Claims may be filed against the carrier within 9 months after the date of delivery of the shipment, and such claims may not be paid for a considerable period thereafter. While the normal period for the carrier's investigations and payments of a claim is about 4 months, certain claims have been paid several years after the dates of delivery of the shipments.

[fol. 10-10] The following table, compiled from a study made by respondents, shows the carloads of shell eggs delivered at New York, Baltimore, Philadelphia, and Boston during 1947, the number of those on which claims were filed, the percent that the shipments containing damaged eggs were of the entire shipments, the revenue on the total shipments, the amount of the claims paid on the specific cars indicated, the percentage that such claims were of the total revenue, and the average claim payments per claim car and per car shipped.

	New York	Philadelphia	Baltimore	Boston	Total
Total cars	7,638	667	690	661	9,656
Total claim cars	5,044	325	114	176	5,659
Percent claim cars are of the total cars	66	48.7	16.5	26.6	58.6
Total freight charges	$2,[illegible]905	$280,590	$262,332	$276,143	$3,456,960
Total claim payments	$1,332,908	$32,741	$41,386	[1]$33,590	$1,440,625
Percent claim payments are of total revenue	50.5	11.7	15.8	12.2	41.7
Claim payments:					
Per claim car	$264.26	$100.74	$363.04	$190.85	$254.87
Per car shipped	$174.51	$49.09	$59.98	$50.82	$149.19

[1] Only payment claims for 10 months.

It will be observed that more than 50 percent of the revenue accruing on shipments of shell eggs to New York in 1947 was paid in damage claims on those shipments. On such traffic, respondents retained less than one-half of the gross revenue to cover the expenses of the transportation

and the contribution of such traffic to the overhead burden. The study clearly portrays the severity of the damage claims on shipments of shell eggs to New York. The claim payments are related specifically to the shipments in connection with which the damage occurred. As compared with New York, the claim payments for damage on shipments to Philadelphia, Boston, and Baltimore ranged from 11.7 to 15.8 percent of the total revenue on the egg traffic to these points. The aggregate claims at the three latter points were slightly in excess of $100,000. It will be noted, however, that the claim ($363.04) per car containing damaged eggs was higher on shipments to Baltimore than to any of the other points indicated.

By 1950 the situation had changed to a certain extent. During the first half of that year only 701 carloads of shell eggs were delivered at New York on which the total freight charges were $270,994.16. On 334 of these shipments no damage claims were filed, but on the remaining 367, on which the revenue was $151,061.28, respondents expect to approve damage claims of $73,561.80, 27.1 percent of the total revenue. These shipments moved under the present regulations which provide for a tolerance of 5 percent on all eggs, other than those rehandled and repacked at point of origin of the rail shipment.

[fol. 10-11] The following table is an analysis of the damage found in the cars included in the next preceding table, indicating the number of damaged cases (fiber or wooden), the character of the damage and the percentages thereof:

	New York	Philadelphia	Baltimore	Boston [1]	Total
Total cases damaged	875,715	15,006	11,796	9,176	911,673
Fiber	446,869	9,794	2,130	3,348	462,141
Wooden	428,846	5,212	9,666	5,828	449,552
Types of damage (in dozens):					
Broken	1,172,376	26,156	41,264	24,354	1,264,150
Leakers	260,154	12,869	120	13,019	286,162
Cracked	757,201	16,037	64,942	29,682	867,862
Stained	989,272	14,638	2,045	4,166	1,010,121
Total (dozens)	3,179,003	69,700	108,371	71,221	3,428,295
Percentages of damage:					
Broken	36.9	37.5	38.1	34.2	36.9
Leakers	8.2	18.5	0.1	18.3	8.3
Cracked	23.8	23.0	59.9	41.7	25.3
Stained	31.1	21.0	1.9	5.8	29.5

[1] Covers only 10 months.

Generally there is little difference between fiber and wooden cases insofar as damage is concerned. There is a marked variation, however, in this relation as to shipments to Baltimore, where out of 11,796 cases containing damaged eggs, 9,666 were wooden. Broken and leaking eggs approximate 45 percent of the total damaged. Damages of those types represent total loss while cracked and stained eggs are salable at prices somewhat lower than those for sound eggs.

The following table compiled from an exhibit of record sets out the total carload loss and damage, the number of cars originated, the revenue therefrom, and the loss and damage per car and per $100 gross revenue on shipments of shell eggs, as compared with other commodities throughout the entire country in 1947.

Commodity	Carload loss and damage	Number of cars	Freight revenue	Loss and damage	
				Per car	Per $100 revenue
Shell eggs	$2,243,655	26,800	$10,585,213	$83.72	$21.20
Melons	2,977,472	56,389	19,701,506	52.80	15.11
Sewer pipe, et cetera	1,029,425	52,589	7,822,128	19.57	13.16
Crockery and earthenware	241,170	8,260	2,650,724	29.20	9.10
Furniture (new)	1,435,312	142,077	33,178,697	10.23	4.38
Grain	5,586,511	1,619,751	394,018,568	3.45	1.42
Meats, fresh and cured	1,388,274	407,144	122,500,635	3.41	1.13
Plumbers' goods	380,337	27,058	8,743,043	14.06	4.35

Damage claims on shell eggs shown in the preceding table are unusually high in relation to like claims on the other commodities. Claims payments on shell eggs in relation to [fol. 10-12] the number of cars average $83.72 for the entire country. For the same year (1947) the corresponding figure for New York was $197.67. And where the claims on shell eggs were directly related to the shipments which moved that year, they averaged $174.51 at New York, $59.98 at Baltimore, $50.82 at Boston and $49.09 at Philadelphia.

The following table shows the relation at New York of damaged cases of eggs to the total number of cases received, the number (in dozens) of damaged eggs, and the percentage of damaged eggs to the total number delivered in the damaged cases during 1947 to and including the first half of 1950.

Period	Cases received	Cases damaged		Dozens damaged	
		Number	Percent	Number	Percent
Year 1947	4,069,210	921,620	22.65	3,333,368	12.06
Year 1948	2,882,527	543,251	18.85	1,741,788	10.69
Year 1949	1,163,207	261,462	22.48	916,097	11.68
Year 1950 [1]	279,488	55,180	19.74	191,150	11.55

[1] For the first half of 1950.

The relation of damaged cases to the total number delivered by rail remains fairly constant at about 20 percent. The actual damage approximates 11 percent or slightly higher of the total number of eggs in the damaged cases, and is in excess of 2 percent of the total number of eggs received. This establishes that, despite the lower traffic volume in the later years, the relative amount of damage to shipments of shell eggs remains about the same.

During the period 1939 to 1949 an average of about 7,189 million eggs a year sold through normal trade channels were produced in the North Atlantic area. Similar data in millions for other areas are 8,984 in the east north central area, 12,698 in the west north central area, 2,940 in the South Atlantic area, 6,119 in the south central area, and 4,321 in the West. Eggs are produced in substantial quantities in all sections of the country. Production in the west north central area is, however, the largest in the country. The relative increase in the production of eggs during the above period was highest in that area, comprised of Iowa, Minnesota, Missouri, North Dakota, South Dakota, and Kansas. The latter area, Illinois, and Wisconsin, in which the greater portion of rail shipments originate, ships eggs to all the principal markets.

Eggs are highly perishable and fragile. A certain amount of damage occurs to them during the grading and packing operations. The principal cause to which shell damage prior to rail transportation is attributable is the fragility of the commodity. Because of age, eggs decompose and become inedible, but there is no relation between [fol. 10-13] the age of an egg and its susceptibility, because of fragility, to shell damage. Loading eggs in railroad cars also involves certain hazards but, where performed by skilled and competent labor, the risk of breakage in that operation because of the protection afforded by the con-

tainers, flats, and fillers is less than in grading and packing. Inspection of shipments at points of origin shows the nature and extent of such damage.

The accepted practice in loading is to measure as to the width and length of the interior of the car by placing one row crosswise from side to side, and another row lengthwise from bunker to bunker, thus ascertaining the exact number of cases the particular car can accommodate. Measuring the car in this manner makes it possible for the loading supervisor to estimate accurately the amount of bracing necessary at the bunkers as well as at the center of the loads. Each row of cases is packed tightly until the loads at both ends of the car have reached the center where the necessary number of wooden bracings is used to keep the load from shifting.

The value of eggs has increased since 1940, and contributes to the substantial loss and damage claims. The cost of labor and materials used in reconditioning the damaged cases has also increased. Those factors, however, appear to be of relatively minor importance in view of the fact that damage claim payments have increased more than 1,800 percent since 1939. In recent years the volume of egg shipments by rail has declined substantially, but the damage results per unit shipped have not improved to any marked degree. The following table shows the respective percentages of rail and truck receipts of shell eggs at 11 principal markets for the first half of each year, 1947 through 1950:

Markets	Receipts							
	Rail				Truck			
	1947 Percent	1948 Percent	1949 Percent	1950 Percent	1947 Percent	1948 Percent	1949 Percent	1950 Percent
New York, N. Y.	70	59	32	13	30	41	68	87
Chicago, Ill.	35	37	13	8	65	63	87	92
Philadelphia, Pa.	41	34	16	2	59	66	84	98
Boston, Mass.	38	39	24	2	62	61	76	98
San Francisco, Calif.	39	25	20	6	61	75	80	94
Los Angeles, Calif.	43	26	15	4	57	74	85	96
Baltimore, Md.	82	80	63	10	18	20	37	90
Atlanta, Ga.	29	10	8	1	71	90	92	99
Cincinnati, Ohio	11	4	1	0.1	89	96	99	99.9
Detroit, Mich.	7	8	3	2	93	92	97	98
New Orleans, La.	58	31	9	1	42	69	91	99
All 11 markets	49	41	20	7	51	59	80	93

As above indicated, the traffic is steadily being diverted from the railroads to the motor carriers. Obviously this is [fol. 10-14] due to the fact that, since the war, the latter have not increased their rates to the same extent as the former. Moreover, motor carriers offer pickup and delivery service, more expeditious transit, and lower damage claims. The receipts of eggs at the markets instanced were slightly in excess of 6,000 carloads in 1949. During the first 9 months of 1950 all carloads of eggs originated amounted to only 3,261, indicating the rapid decline in the shipments of shell eggs by rail.

One of the factors entering into the question of claims for damage is the material, consisting of flats and fillers, used in packing the eggs in the cases. A flat is placed in the bottom of an egg case, and a filler is placed over the flat. The flat contains depressions in which the small end of the egg rests. The fillers are crossed sections of fiberboard interlocked in such a way that 36 spaces are formed for the insertion of eggs. When the first filler is packed, another flat and filler are placed over the first layer. In 1946 the height of the fillers was increased from 2.25 to 2.33 inches. The spaces in the fillers are 1.75 inches square.

Tests conducted by the Department of Agriculture in 1946 and 1948 established that a larger percentage of eggs shipped during these periods were either too long or too wide for the standard-sized flats and fillers then in use than was the case in 1917. The changes in the size and shape of eggs resulted from the breeding of chickens to produce larger eggs. The industry as a whole is now adopting the larger-sized fillers for commercial egg shipments.

The result of those tests indicated that the damages per case with the new type flat and filler averaged (in eggs) 0.2 crown checks, 2.6 checked on the sides, and 1.1 leaking from other than crown damage, as compared with crown checks of 1.4, other than crown checks 2.8, leakers from crown damage 0.4, and from other than crown damage 2.3 in connection with the old type flat and filler. This establishes that the new type flat and filler result in a reduction in the damage to eggs. The industry is now changing over to the new type inner materials and to cases of greater height.

In 1946, the railroads began extensive research relative

to loss and damage claims on shell eggs. At New York all shipments were inspected upon arrival. Studies were undertaken to discover the cause of the damage and to develop ways of eliminating it. When inspections at destination identified points at which damaged shipments consistently originated, inspections were made at those points. Tests were made, using new and old loading practices. Bulling materials were tested to eliminate lengthwise slack. Cases of eggs were loaded in the cars lengthwise, crosswise, and in various combinations. Trial loadings were made in which an adhesive was used to bind the entire [fol. 10-15] load into a solid unit to eliminate lengthwise shifting, but which would permit normal unloading. Rubber pads were used to cover the bunker walls of the car, thus providing a cushion to minimize shock at the ends of the load. This proved impractical because of the problem of returning the pads to the origin points for reuse. Excelsior pads were tried as a substitute. In the test shipments, representative cases were inspected at origin and destination by the same inspector. The results were not satisfactory. No practical method of loading was discovered that could materially reduce the damage result at destination.

Respondents have done their utmost to eliminate the damages and little, if any, improvement may be expected from better loading practices. The shippers and receivers are almost uniformly of the opinion that much of the damage results from rough handling of the shipments by respondents. Under similar loading and packing practices prior to World War II, damage to shipments of eggs was reasonably low. Shortages and quality of equipment, heavy volume of traffic, and inexperienced railroad operating personnel contributed to the damage during the war and for some time thereafter. While many of these conditions have improved, the damage to eggs to the East, particularly New York, has not declined to any great extent. On shipments to other areas, claims for damage to eggs are considerably lower than those in the trunk-line and New England territories. Respondents assert that receivers of eggs at other points are not so critical in their examination of in-bound shipments of eggs as are the receivers in the East, particularly New York, and accept shipments which contain certain

damage without filing claims. The record does not support this assertion, but establishes conclusively that the damage claims on shipments of eggs to points in eastern seaboard territory, particularly New York, proportionately exceed in number and amount those at any other point in the country.

All claims must be supported by a notation to that effect, on the paid freight bill and signed by the consignee and respondent's inspector. As recovery for damage is usually less than the cost of examining and reconditioning the cases, together with the value of the damaged contents, the consignee suffers some slight loss on each damaged shipment. The integrity of inspectors employed by the inspection agency, and who represent the carrier, is not questioned.

Protestants contend that damage to eggs in transit is usually distinguishable from that which existed prior to rail transportation by the extent and location of the damage; that eggs damaged at the time of loading are scattered throughout the case and are not massed at any one point; that damage occurring in transit, from impacts [fol. 10-16] caused by rough handling, is most severe at the outside and inside rows of the fillers where the eggs adjoin the end or side of the case, or its center partition; and that such damage does not result from packing operations. These contentions are highly problematical and overlook the fact that mass damage may also occur during the moving of the cases from the packing plant to the railroad car, in the actual loading into the car, and as a result of the manner in which the cases are loaded and braced.

The usual commercially accepted method of examining eggs is by candling. This process consists of placing the eggs before a candle lamp so that the contents may be seen and the eggs classified in accordance with certain fixed standards. There is, however, the possibility of human error in all candling, as well as packing processes.

There is keen competition between egg producers and shippers throughout the entire country. Hence, all egg-packing plants are operated in substantially the same manner and according to the same competitive standards. One large shipper with numerous egg-packing plants throughout the country issues uniform instructions to its egg packers to the effect that "no checked eggs are permissible" in any of

the grades shipped. Despite the intention and desire of every egg packer to achieve perfection, it is nevertheless true that, on account of human error, the commercially sound shipment does contain some checked and some inedible eggs. Even the protestants admit that in grading and packing eggs absolute perfection is commercially impossible.

Approximately 10 percent of the eggs produced throughout the entire country is inspected and graded under supervision of the United States Department of Agriculture. In this operation an adequate and representative sample of the shipment is inspected. On carload lots the inspection covers 15 cases drawn at random. The graders examine 100 eggs out of each case. Each egg selected is usually inspected, candled, and graded.

The Department made studies with respect to damage to shell eggs, the results of which were made a part of the record in these proceedings. The studies indicated that when eggs from the farm are delivered at the packing plant 5 percent of them contain checks. Of this, 4 percent existed when the eggs left the farm, and an additional 1 percent developed in the movement to the plant. In addition, 12 percent more consisted of stains and dirties. At the plant the eggs are reworked and packed. A careful inspection made of the eggs as they were loaded into 115 railroad cars in 1948 and 1949 at points in the midwestern area, disclosed that they contained an average of 1.4 percent stains and dirties, 1.9 checks, and 0.1 designated as loss. The [fol. 10-17] 1.9 percent checks were, however, found by candling and clicking, and could not be detected by the kind of inspection performed at New York. An examination of those identical shipments at destination showed respective damage of 2.1, 2.7, and 0.3 percent, reflecting increases of 0.7, 0.8, and 0.2 percent, respectively, incident to the movement in transit. Similar inspection in 1948, of 737 carloads of eggs loaded at origin points throughout the entire country, showed an average of stains and dirties of 1.8, checks of 1.9, and loss of 0.2 percent. The result of these inspections indicates an average damage of 3.4 percent at origin and 5.1 percent at destination, and typifies the character of eggs which are loaded into railroad cars at points of origin.

It also establishes that there is a normal expectancy of shell damage in every car loaded with eggs, and that it is at least impractical to load a perfect car.

Studies submitted by respondents in respect of inspections made by them of shipments of eggs at point of origin indicate that there is shell damage in every car, irrespective of whether the eggs are handled and repacked at rail point of shipment or are trucked to that point. Such shell damage prior to rail transportation is attributable to the fragile nature of the commodity, the candling and repacking operations, and the handling of the packed egg cases into freight cars. For example, surveys made by respondents in 1947 and 1948, of 126 shipments of eggs from Indiana, and less than 100 shipments from Iowa and Minnesota showed percentages of shell damage ranging from 2.2 to 3.2, 2.46 to 2.57, and 1.81 to 3.48 from these respective States. All of the shipments from Indiana were, however, rehandled and repacked at points other than the rail points of origin of the shipments. An inspection by the Western Weighing & Inspection Bureau of 59 shipments of eggs from numerous points in Iowa, and 1 from Kasson, Minn., during the period April 19 to June 30, 1949, showed broken and checked eggs ranging from 0.93 to 7.26, and averaging 2.61 percent. The record indicates that checked, stained, dirty, or broken eggs are not intentionally packed in any shipment. Occasionally, however, to load a car, unskilled itinerant labor is used with apparently no previous training and with no supervision on the part of certain, but not all, shippers in promoting careful and proper loading. Checks develop in any oil dip processing of eggs, and eggs are also broken in the process of affixing lids on the cases.

New York is the largest destination market in the country for eggs. It demands eggs of the best quality. Its distribution facilities are so complete that carloads assembled from a variety of packing sources in so-called consolidated cars, as well as straight carloads from a single packing plant, can be advantageously handled. New York is [fol. 10-18] the only point, however, where all carloads of eggs are inspected by respondent upon arrival. This has been done for the past 25 years at least. It is the practice of the inspection agency to note the general condition of

every car of eggs arriving at that point. There are sufficient inspectors available for this work. In addition to making a report of the general condition of the load, the inspection agency representative, together with the consignee's representative, will make the 20-case top layer joint inspection provided for in the governing regulations. If upon such inspection damage to the eggs is discovered, the damaged cases may be set aside and repacked by the consignee at the expense of the carrier.

Receivers at New York make the inspection of the eggs by their own employees. They also employ independent contractors for that purpose, who pay their men on the basis of the number of hours worked as evidenced by the inspection agency slip that accompanies each claim. Certain cases show external signs of damage. When eggs are damaged the fillers in the case become wet. Receivers of eggs at New York could ask for inspection of all cases in the shipment if one checked egg was found in the top layer of any of 20 cases. Certain receivers would not, however, request inspection of the entire shipment unless at least three damaged eggs were found in the top layer of a case.

In the repacking or reconditioning process, eggs are transferred from a damaged case to a good case one whole layer (3 dozen) at a time. In replacing the smashed and leaking eggs, inspection to the next lower layer in the case is continued until a good layer is found. If, however, there is only one leaker in the top layer that egg is replaced and the case is put in the good-order pile. In the inspection the lid must be removed completely from the case, no candling lamp is used and the eggs are not clicked. The inspection is merely visual.

With respect to the provision in the proposed regulations for the presentation by consignees making damage claims, of certificates of Federal or State inspection agencies as to the condition of the eggs at time of shipment, protestants take the position that, in order correctly to determine the amount of transit damage, a similar inspection should be made at point of destination, rather than the alleged less minute inspection now performed. It is contended that Federal or State inspection at point of origin, and the in-

spection at destination, such as New York, now performed, are made under entirely different conditions. As distinguished from the high degree of care exercised in the inspection at point of origin it is contended that the alleged cursory 20-case top-layer visual inspection at destination, combined with the reconditioning process, could not possibly discover all of the damaged eggs in a roughly handled shipment.

[fol. 10-19] The record shows that a Federal inspection of five shipments at New York, which had been previously inspected in the usual commercial manner upon arrival at that point, showed additional damage of 1.72 percent stains, and 2.2 percent checks. Similar Federal inspection at that point of another group of five shipments disclosed an average of 0.66 percent stains and 2.9 percent checks. Ten carloads of eggs from points in Iowa, which were accepted as in good order by the consignee in New York, but which were later given a Federal inspection, disclosed an average combined destination damage of 7.3 percent stains, checks, and loss. From the same origins eight carloads were received in bad order. After these shipments had been reconditioned, Federal inspection thereof disclosed an average remaining damage of 7 percent, combined stains, checks, and loss. On behalf of the shipper of those 18 carloads it was testified that the eggs shipped by it are received, candled, packed, and shipped in accordance with the same methods used by other egg packers, and that no checked eggs are ever knowingly packed. The eggs in those shipments were loaded at origin directly from the packing plant into the rail car. Similar evidence was adduced as to other shipments.

The record does not indicate the handling received by those particular shipments after they were delivered to the consignees. It does indicate, however, based on the number and amount of claims, that the inspection of shipments of eggs arriving at New York is being performed with a view to detecting all damaged eggs. Claims in amounts exceeding 50 percent of the revenue on the entire egg traffic to New York in 1947 do not appear to be based on a cursory inspection.

The loss and damage to shell eggs experienced by the mili-

tary department of the Government, particularly at New York, is substantially less than the average damage experienced by receivers of eggs generally at that point. From 1944 to 1946, inclusive, 2,519 carloads of eggs containing 1,511,400 cases were received at the New York Quartermaster Market Center. Of these, 304 carloads containing 181,201 cases were shown by notation upon the freight receipt to be damaged. Upon final settlement, however, with the carriers only 9,483 cases were rejected. There was 1 claim car out of every 8 cars received, 1 case reported damaged out of every 19, and only 1 case out of every 150 was rejected and claim made for damage, as compared with about 9 claim cars out of every 10 cars received by other New York egg dealers in 1947. As shipments of eggs to the military departments move in the same trains as do shipments to other receivers of eggs in the New York area, it is obvious that when loaded at points of origin the eggs to the former either (1) contain less shell defects than do those to the latter, or (2) the military departments accept as [fol. 10-20] in good order, and on which no damage claims are filed, eggs containing shell defects of the same character and to the same approximate extent as do those in respect of which damage claims are filed by receivers of eggs generally at that point.

Eggs are shipped in refrigerator cars. A company at Omaha, Nebr., takes the position that damage to eggs in transit results from the use of old equipment. It stated that 38 cars, in respect of which it had damage claims, were built during the period 1917 to 1931, inclusive. This company ships 85 to 100 carloads annually to New York for export only, on which there have been no claims for damage. The eggs are packed in wooden cases and strapped. The bracing in the cars is the same as is used in connection with domestic shipments. On this record we are unable to determine that the use of cars built during the period indicated resulted in damage in transit to eggs.

Swift & Company has about 80 dairy and poultry plants throughout the country, principally in western trunk-line territory, at which it collects, repacks, and resells eggs. Those shipped from western trunk-line plants are marketed principally in trunk-line and New England territories. Eggs

are transported to Swift's plants by farmers in their own equipment or by Swift's trucks, from an area extending from 100 to 150 miles. Those eggs are normally described as current receipts. After being delivered at the various plants, the eggs are candled and packed according to grade. The broken, cracked, or checked eggs are removed. New wood and fiber cases, fillers, and flats are used. At certain of its plants all egg shipments are subject to grading by the Department of Agriculture. All eggs shipped by Swift are rehandled and repacked either at the origin of the rail shipment or at a point beyond whence they are trucked to the point of rail shipment.

In 1948, Swift shipped 274 carloads of eggs to the New York area. Of these, 51 contained eggs damaged in transit, on which the damage per car averaged $305.36. During that year Swift shipped 1,696 carloads of eggs to other points. Of these, 245 contained eggs damaged in transit, on which the claims per car averaged $186.80. In 1949, Swift shipped 246 carloads of eggs to points on the Pacific coast, on only 5 of which claims were filed. The damage claims on four averaged $29.78 per car. The other car on which the claim was $1,678.96 had been wrecked. On shipments of eggs, Swift places placards reading "Eggs handle carefully" on the sides and ends of the car. Other packing companies grade, pack, and load eggs in the same manner as Swift does.

In 1948, and during the preceding decade, Armour & Company shipped about 50 percent of its eggs to trunk-line and [fol. 10-21] New England territories. Approximately 90 percent of Armour's claims for damage to eggs are on shipments to those territories, principally the New York metropolitan area. This company's witness takes the position that the principal cause of damage at New York is the carfloat service across the North River from the New Jersey side. The record indicates that shipments moving all rail in connection with New York Central delivery contained, at least, as high a percentage of damage as did the car-floated shipments.

The Pacific Dairy and Poultry Association and the Public Service Commission of Utah take the position that respondents have failed to justify the present and suspended rules;

that these rules are per se unlawful whether applied at New York or elsewhere because they constitute a limitation on respondent's liability in violation of section 20 (11) of the Interstate Commerce Act; and that no condition of abnormal damage to shell eggs in transit has been shown with respect to shipments to points in western territory or to Pacific coast markets.

California is a deficit area in production with respect to the amount of eggs consumed. In 1949, 2,371,187 cases of eggs were received in Los Angeles and San Francisco, Calif. Of these, 1,579,257 cases (66 percent) originated in California, the remaining 24 percent originated in States east thereof to and including Illinois, and in other Pacific Coast States.

Of the total receipts of eggs at Los Angeles, truck receipts were 39 percent in 1945 and 90 percent in 1949. At San Francisco the respective percentages were 58 and 86. The diversion to truck was caused by shorter time and less damage in transit, prompt settlement of claims, and no necessity of trucking to or from railroad loading and unloading locations. Several members of the association have received many cars with little or no damage. There is no evidence of excessive damage on shipments to Pacific coast territory. The principal damage occurs on shipments to New York and to other east coast cities. Shipments from Pacific coast territory to eastern territory are negligible. In 1948, New York received approximately 130 carloads of eggs from the mountain-Pacific States, mostly from Utah. Production in those States that year approximated 22,500 carloads. In the mountain-Pacific area eggs are graded according to United States Department of Agriculture regulations. Before packing, all broken, checked, and cracked eggs are removed.

Utah Poultry & Farmers Cooperative is composed of about 6,000 members. Prior to World War II the principal volume of production was shipped to the Pacific coast area. In 1949, 104 carloads (15 percent of the production) were shipped to eastern destinations, 43 carloads (6 percent) to the Southwest including Los Angeles, and 10 [fol. 10-22] carloads (1 percent) in the Northwest. Of the 104 carloads to the East, only 33 carloads were delivered

without damage, and on the 53 carloads to the Southwest and Northwest no damage was reported.

In the first half of 1950, 52 carloads were shipped from Utah to eastern destinations, of which only 10 carloads were delivered without damage, but of 83 carloads shipped to the Pacific coast practically all were delivered in good order.

Many elements other than the actual value of the eggs enter into a damage claim. For instance, such claims include the loss incident to the damage, the labor charges and the materials used in reconditioning the cases, and the warehouse charges covering the extra expense of handling cases containing damaged eggs. In an analysis of 150 claims, picked currently as filed, respondents found that of the total amount claimed, $48,791.74, the portion allocated to damage to the eggs was $33,575.91 (69 percent); to labor $12,494.45 (26 percent); to material $2,280.32 (4.5 percent); and to warehouse charges $259.38 (0.5 percent).

Claims for damage to eggs throughout the entire country increased from approximately $110,000 in 1941 to an all time peak of $2,338,462 in 1947. Claim payments in the latter year were relatively greater for damage to eggs than to any other commodity. The shell egg carload traffic originated in 1947 was only 0.072 percent of all carload traffic while the claim payments for damage to eggs constituted 1.91 percent of all claim payments. Damage claims are not filed in instances were certain shocks to eggs, incident to rough transportation, such as breaking the air cell or loosening the yolk from the white, result in loss of grade or quality.

The claim payments on eggs in official territory were 2.32 percent in 1941, 7.02 percent in 1943, 16.16 percent in 1945, and 38.41 percent in 1947, of the aggregate revenue on this traffic. In the latter year the total claim payments in official territory amounted to $1,444,453, of which $1,332,907 resulted from damage to shipments to New York. The damage of record in cars inspected at New York since 1947 approximates 11 percent of the contents of the cases segregated by the consignee because of damage. During that period, however, the number of cars of shell eggs moving to New York has declined substantially. There are large, though few, claims for damage in respect of shipments of eggs to other points in official territory such as Biddeford,

Maine, Elizabeth, N. J., Erie and Greensburg, Pa., Newark, N. J., Utica, N. Y., Worcester, Mass., and other points:

Although the tariff provisions under investigation apply, or are proposed to apply, Nation-wide, the preponderance of the evidence presented in justification thereof related to [fol. 10-23] the damage claims in official territory, particularly in the New York City area. The relative importance of the New York market is shown by the fact that it receives annually about 6 million cases, as compared with 5 million at Chicago, 1 million each at Philadelphia, Boston, San Francisco, Los Angeles, and Detroit, Mich., and one-half million each at Baltimore, Atlanta, Ga., Cincinnati, Ohio, and New Orleans, La. Of the 26,800 carloads of eggs originated throughout the country in 1947, 7,638 (28.3 percent), were delivered in the New York City area, of which 5,044 cars (66 percent) were in bad order.

The record indicates that in the transportation of eggs by motor truck the amount of shell damage is negligible. On behalf of a freight forwarder at Minneapolis, Minn., who received approximately 3,000 cases of eggs a week by private and common-carrier trucks from 200 producers in Minnesota, it was testified that the cases are inspected as they are unloaded and any cases containing damaged eggs refused. In normal times approximately 5 or 6 cases are refused out of the 3,000. Of 162,353 cases of eggs received by truck at the San Francisco Quartermaster Market Center from midwestern points during the period December 1948 to May 1949, only 653 cases (about 0.14 percent) were damaged or rejected. The receipt of eggs at destination without filing damage claims would depend largely upon the character of the inspection at that point as well as upon the condition of the eggs at point of origin.

Certain protestants intimate that the heavy loading of eggs during the war years was, to a certain extent, the cause of the unusually high amount of damage. On behalf of a concern at Omaha, Nebr., it was testified that—

> We checked the first 6 months of 1948 and found that we had moved 309 cars of eggs from our midwestern branches to various destinations throughout the United States and for export. Of these, 53 cars contained less

than 600 cases out of which we had four claims with an average per car of $3.59, while from the remaining 256 cars containing 600 cases each, we had 34 claims with average per car of $24.95.

There are, however, claims for damage on as many 400-case carloads as on 600-case carloads.

Protestants take the position that rough handling in transit is the most important single cause of damage to eggs; and that the large claims for such damage would not have been approved by the railroads unless they were satisfied as to the fact of railroad liability. A witness for consignee at New York observed the operation in the classification yards in New Jersey. On the side of certain cars there was a sign "do not hump," but he had seen some of those cars go over the hump in those yards. The witness did not know, however, whether the cars were loaded or empty. [fol. 10-24] With respect to protestants' contention that the present and proposed regulations contravene the provisions of section 20 (11) of the act, the respondents contend that there is no basis for such a contention and that the damage to the extent of the proposed tolerances is due to the inherent nature of the commodity. A carrier is liable for failure to transport safely goods entrusted to its care, unless the loss or damage was due to one of certain causes, such as act of God, the public enemy, the act of the shipper, or the nature of the goods. See *Chesapeake & O. Ry. Co.* v. *A. F. Thompson Mfg. Co.*, 270 U. S. 416.

The present and proposed regulations are not limitations of the carriers' liability in respect of damage to property transported by them. They constitute merely tariff rules and practices designed to relieve the carriers from paying claims for damages which are not attributable to their negligence but which result from the inherent nature of the commodity transported. Such inherent defects were recognized in No. 10012, wherein division 2 found a tolerance of 5 percent in respect of "current receipts eggs" not unreasonable or otherwise unlawful. The record herein establishes that there are inherent defects also in eggs other than so-called current receipts.

In *A. B. Crough Grain Co.* v. *Atchison, T. & S. F. Ry. Co.*,

41 I. C. C. 717,[2] wherein it was alleged, among other things, that a tariff rule which provided for certain deductions in the adjustment of claims for loss allowances incident to the natural shrinkage of grain was, because the carriers sought to limit their liability, illegal in violation of section 20 of the act, we said:

> There appears to be little or no merit in the contention that the rule violates the inhibition clause of the act against the limitation of liability, for the limitation is not against losses *caused by the carrier or its connections*, but rather against liability for losses *due to the inherent nature of the commodities themselves* and attributable to no human agency.

Certain tolerances have been adopted by the Department of Agriculture, and the egg trade, in grading eggs. Certain amounts and kinds of shell damage are permitted in each grade. For example, in eggs graded AA, and A, 5 percent of shell damage, consisting of 0.5 percent leakers, and 4.5 percent checks or stains, is permitted. Somewhat similar tolerances are permitted by the Army of the United States. During rail transportation 18 percent of grade A quality eggs will be reduced to grade B quality, on account of changes within the eggs. Shocks in transit, resulting from rough handling, cause broken air cells and loosened yolks. The resulting loss of interior quality is present in every damaged shipment. No claims are, however, filed for this type of damage in transit.

[fol. 10-25] Respondents take the position that the normal expectancy of damage to eggs which have been rehandled at origin prior to tender for rail transportation is over 3 percent, and that the normal expectancy of damage in transit due to the inherent nature of the eggs, without negligence on the part of the railroad, is approximately 1 percent. Under the proposed regulations, the shipper is, however, afforded an opportunity of presenting an inspection certificate of Federal or State inspection agencies showing the extent of the physical damage to the eggs determined at the rail point of origin of the shipment immediately prior to

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[2] Original report, 36 I. C. C. 265.

tender for rail transportation, to which would be added 1 percent for the estimated damage in transit. The total thus computed would be deducted from the claim against the railroad for the damage found to exist at destination. In this manner, the shippers are afforded an opportunity to have the exact amount of point of origin damage determined and given recognition.

Eggs containing checks, blind or visible, are to a certain extent in a damaged condition. In other words, the shells on those eggs are defective or cracked. These defects or cracks, unlike breaks or fractures in the bones of animate things, do not heal or knit with the passage of time. Any change in the condition of a defect or crack in an eggshell can result only in its enlargement, a healing or knitting thereof not being possible. The slightest movement in transportation may cause additional damage to such eggs. Such damage cannot be imputed to the negligence of the carrier but rather to the inherent nature of the commodity. Even a slight enlargement of the check or defective part could, by a rupture or break in the shell membrane, result in a leaking egg. Such an egg causes additional damage, such as stains, to otherwise sound eggs in the same case.

On the record in these proceedings, the present tolerance of 5 percent in respect of all eggs, other than those described as rehandled and repacked, and storage packed eggs, processed at packing plants or storage warehouses at point of origin of the rail shipment, appears reasonable. The damage to such eggs for which respondents are not responsible averages that amount.

Under respondents' proposal, tolerances of 4 percent would be allowed on eggs placed in packages at the rail point of origin, and 6 percent on shipments placed in packages at points other than the rail point of origin, subject to modification incident to certificates of Federal and State inspection agencies showing the amount of the physical damage.

As stated, the present 5-percent tolerance on eggs not processed at the rail point of origin appears reasonable. The record also supports a finding that a tolerance of 3 percent would be reasonable on eggs processed at the rail point of origin.

[fol. 10-26] We find that the present 5 percent tolerance on eggs, other than those rehandled and repacked at the rail point of origin, is not shown to be unreasonable or otherwise unlawful. We further find that the proposed tolerances of 4 percent on eggs packed at the rail point of origin, and 6 percent on eggs packed at points other than the rail point of origin have not been justified, but that tolerances of 3 and 5 percent, respectively, would be reasonable. Orders will be entered discontinuing the investigation in the title proceeding, and requiring the cancellation of the suspended schedules without prejudice to the filing of new schedules in conformity with the findings herein.

Commissioner Knudson did not participate in the disposition of this proceeding.

Appendix A

The following are the tariff provisions in effect immediately prior to July 24, 1948.

Note 5.—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1.—Shippers of eggs shall be required to note on shipping order and bill of lading:

(a) The character of the shipment, whether current receipts, rehandled current receipts, rehandled and repacked eggs, see paragraph (d), storage packed eggs, checks or dirties, and the number of cases of each.

(b) The particular identification marks appearing on cases containing different grades as for example:

400 cases storage packed (N/M), no mark
40 cases dirty eggs, marked "D"
10 cases checked or cracked eggs, marked "C"
If no marks, billing must so read.

(c) Number of cases separately that are not packed with full thirty dozen and extent of shortage.

(d) Rehandled and repacked eggs consist of eggs rehandled and repacked in new standard cases with new flats,

fillers and cushions, in accordance with classification requirements, except as provided in Note 10, item 14602.

Section 2.—Upon arrival at destinations of shipments of eggs in CL or LCL lots, consignee or his authorized representative shall have the privilege, before eggs leave the possession of carrier and under supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload, or of twenty-five percent (25%), with a maximum of twenty (20) cases, of the cases of any LCL lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs.

If such examination shows no evidence of damage, it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his [fol. 10-27] representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

Section 3.—Where the carrier determines that space at the carrier's station does not admit of the examination there of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. Upon demand made therefor at the time of delivery, even though space does so admit, the carrier may at its option elect to have the examination at the warehouse of the consignee or such other place as the two may agree. Such inspection shall be a joint inspection and shall be made within twenty-four (24) hours after delivery of the eggs by the carrier. The carrier shall have the right in such instances to mark the cases so delivered or examined for the purpose of identification. No cases shall be opened until both parties are present. However, where carload shipments are consigned to cold storage warehouses or packing plants, inspection may be made at such plants but only in presence of authorized representatives of carrier.

Section 4.—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint examination of the entire contents of the shipment to determine the damage from such causes, provided demand is made therefor within such time.

Section 5.—On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6.—In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability.

Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.

Section 7.—In adjustment of claims for damage, the notation made on paid freight receipt or other document by joint inspectors shall be considered conclusive as to extent of damage. Any investigation necessary for purpose of determining carrier's liability for such damage shall be made promptly and claims shall be settled upon their merits.

No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier. If, by reconditioning any damaged case or contents, there shall result an enhanced value because of such reconditioning of such case or contents, such increased value shall be credited to the claims.

Appendix B

The following are the present tariff provisions under investigation in the captioned proceeding:

Note 5.—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1.—Shippers of eggs shall be required to note on shipping order and bill of lading:

[fol. 10-28] (1) The character of the shipment, whether current receipts or graded, rehandled and repacked eggs, storage packed eggs, see paragraphs (a), (b) and (c), checks or dirties, and the number of cases of each.

(2) The particular identification mark appearing on cases containing different grades as for example:

400 cases storage packed (N/M), no mark
40 cases dirty eggs, marked "D"
10 cases checked or cracked eggs, marked "C"
If no marks, billing must so read.

(3) Number of cases separately that are not packed with full thirty dozen and extent of shortage.

(a) The term "rehandled and repacked" shall apply only to eggs that have been rehandled and repacked *at point of origin of the rail shipment* in new standard cases with new flats, fillers and cushions, in accordance with Classification requirements, except as provided in Note 10, item 14602. Broken, cracked, checked eggs and eggs stained from broken eggs shall be removed in such rehandling and repacking. Eggs that have been shipped by rail as "rehandled and repacked" eggs under the provisions of this paragraph and delivered by rail to a storage warehouse will, if reshipped by rail from the storage warehouse, be considered as "rehandled and repacked" eggs.

(b) The term "storage packed eggs" shall apply only to eggs that have been graded and sorted at packing plants or storage warehouses located at point of origin of the rail shipment after the removal of broken, cracked, checked eggs, and eggs stained from broken eggs. The

graded and sorted eggs shall be packed in new standard cases with new flats, fillers and cushions, in accordance with Classification requirements, except as provided in Note 10, item 14602. Eggs that have been shipped by rail as "storage packed eggs" under the provisions of this paragraph and delivered by rail to a storage warehouse will, if reshipped by rail from the storage warehouse, be considered as "storage packed eggs."

(c) The terms "current receipts" or "graded" shall apply to eggs not complying with the provisions of paragraphs (a) and (b). (The terms "current receipts" or "graded" when used on a shipping order and bill of lading do not necessarily denote the commercial grade of the eggs.)

Section 2.—(a) Upon arrival at destinations of shipments of "rehandled and repacked" eggs or "storage packed" eggs in CL or LCL lots, consignee or his authorized representative shall have the privilege, before eggs leave the possession of carrier and under the supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload or of twenty-five percent (25%) with a maximum of twenty (20) cases, of the cases of any LCL lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs. A case showing external evidence of damaged eggs within that case not disclosed by top layer inspection may be segregated for the purpose of ascertaining the actual damage in that case.

If such examination shows no evidence of damage it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

[fol. 10-29] (b) Upon arrival at destinations of shipments of "current receipts" or "graded" eggs in CL or LCL lots, consignee or his authorized representative shall have the privilege before eggs leave the possession of carrier and under supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload, or of twenty-five percent (25%) with a maximum of twenty (20) cases, of the cases of any LCL lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs. A case showing external evidence of damaged eggs within that case not disclosed by top layer inspection may be segregated for the purpose of ascertaining the actual damage in that case.

If such examination shows five percent (5%) or less damage, it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses more than five percent (5%) damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing more than five percent (5%) damage. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

Section 3.—Where the carrier determines that space at the carrier's station does not admit of the examination there of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. Upon demand made therefor at the time of delivery, even though space does so admit, the carrier may at its option elect to have the examination at the warehouse of the consignee or such other place as the two may agree. Such inspection shall be a joint inspection and shall be made within twenty-four (24) hours after delivery of the eggs by the carrier. The carrier shall have the right in such instances to mark the cases so delivered or examined for the purpose of identification. No cases shall be opened until both parties are present. However, where carload shipments are con-

signed to cold-storage warehouses or packing plants, inspection may be made at such plants, but only in presence of authorized representatives of carrier.

Section 4.—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint examination of the entire contents of the shipment to determine the damage from such causes, provided demand is made therefor within such time.

Section 5.—On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6.—In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability.

Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.

Section 7.—In adjustment of claims for damage, the notation made on paid freight receipt or other document by joint inspectors shall be considered conclusive as to extent of damage. Any investigation necessary for purpose [fol. 10-30] of determining carrier's liability for such damage shall be made promptly and claims shall be settled upon their merits.

No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier. If, by reconditioning any damaged case or contents, there shall result an enhanced value because of such reconditioning of such case or contents, such increased value shall be credited to the claim.

Appendix C

The following tariff provisions are under suspension in Docket No. I. & S. 5792:

Note 5.—Special regulations governing descriptions, marks inspection and delivery of eggs, and the handling of claims thereunder.

Section 1.—Shippers of eggs must place the following information on shipping order and bill of lading:

(a) Total number of packages.

(b) Type of package (wooden or fiberboard) and number of each type and capacity.

(c) Number of packages that do not contain full number of eggs for which the package is intended, and the actual extent of such shortage.

(d) Number of packages entirely containing checked, cracked, stained or dirty eggs.

Section 2.—Upon arrival of shipment at point of delivery, the consignee or his authorized representative shall have the privilege of opening each package, at no expense to the carrier (see Section 8), and of initially examining the contents thereof; provided, however, on notice by the carrier, such initial examination shall be in the presence of the carrier's representative. If any package contains eggs having shell damage for which the carriers may be deemed responsible, the contents of such package shall be jointly inspected by the consignee and the carrier, or their authorized representatives. Any damage to the eggs shall be jointly recorded by the consignee and the carrier, or their authorized representatives, and such joint record shall be conclusive as to the nature and extent of damage.

Section 3.—The examination by consignee and joint inspection by consignee and carrier, provided for in Section 2 of this Note, shall be made before the shipment is removed from carrier's possession, except where the carrier agrees that the joint examination, or both the examination and joint inspection, may be made elsewhere, and within a specified period of time after actual delivery of the shipment by the carrier into possession of consignee or his

designated agent. The carrier shall have the right to place identifying marks upon any package to be inspected.

Section 4.—Upon discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint inspection of the entire contents of the shipment to determine the damage from such causes.

Section 5.—On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6.—On eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where the physical damage to the eggs at destination does not [fol. 10-31] exceed 4% of the contents of the packages containing damaged eggs. Where damage exceeds 4%, claims shall be allowed for all damage in excess of 4% if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 3%, the percentage of actual damage as shown on such certificates, plus 1% shall be used in lieu of 4% specified in this Section.

Section 7.—On eggs placed in packages at points other than the rail point of origin, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 6% of the contents of the packages containing damaged eggs. Where damage exceeds 6% claims shall be allowed in excess of 6%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 5%, the percentage of actual damage as shown on such certificates, plus 1% shall be used in lieu of 6% specified in this Section.

Section 8.—No expense incurred by consignee in the

ascertainment of damage will be allowed. In case of carrier liability, actual and necessary charges incurred for labor and material, as verified by carrier representative, in reconditioning each package in which verified damage exceeds the percentages stated or otherwise provided for in Section 6 or Section 7 of this Note, whichever is applicable, shall be borne by the carrier. If, by reconditioning any damaged package or contents, there shall result an enhanced value because of such reconditioning of such package or contents, such increased value shall be credited to the claim.

Section 9.—Where the application of percentages stated or otherwise provided for in Section 6 or Section 7 of this Note result in fractions of one egg, such fractions shall be increased to the next whole number.

[fol. 11] EXHIBIT B TO COMPLAINT

Note 5 in Supplement No. 10 to Consolidated Freight Classification No. 20 reads as follows:

Note 5.—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1.—Shippers of eggs must place the following information on shipping order and bill of lading:

(a) Total number of packages.

(b) Type of package (wooden or fiberboard) and number of each type and capacity.

(c) Number of packages that do not contain full number of eggs for which the package is intended, and the actual extent of such shortage.

(d) Number of packages entirely containing checked, cracked, stained or dirty eggs.

Section 2.—Upon arrival of shipment at point of delivery, the consignee or his authorized representative shall have the privilege of opening each package, at no expense to the carrier (see Section 8), and of initially examining the contents thereof; provided, however, on notice by the carrier, such initial examination shall be in the presence of the

carrier's representative. If any package contains eggs having shell damage for which the carriers may be deemed responsible, the contents of such package shall be jointly inspected by the consignee and the carrier, or their authorized representatives. Any damage to the eggs shall be jointly recorded by the consignee and the carrier, or their authorized representatives, and such joint record shall be conclusive as to the nature and extent of damage.

Section 3.—The examination by consignee and joint inspection by consignee and carrier, provided for in Section 2 of this Note, shall be made before the shipment is removed from carrier's possession, except where the carrier agrees that the joint examination, or both the examination and joint inspection, may be made elsewhere and within a specific period of time after actual delivery of the shipment by the carrier into possession of consignee, or his designated agent. The carrier shall have the right to place identifying marks upon any package to be inspected.

Section 4.—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint inspection of the entire contents of the shipment to determine the damage from such causes.

Section 5.—On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6.—On eggs placed in packages at rail point of origin of shipment, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 3% of the contents of the packages containing damaged eggs. Where damage exceeds 3%, claims shall be allowed for all damage in excess of 3%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent

of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 2%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 3% specified in this Section.

[fol. 12] *Section 7.*—On eggs placed in packages at points other than the rail point of origin, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 5% of the contents of the packages containing damaged eggs. Where damage exceeds 5% claims shall be allowed in excess of 5%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 4%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 5% specified in this Section.

Section 8.—No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier liability, actual and necessary charges incurred for labor and material, as verified by carrier representative, in reconditioning each package in which verified damage exceeds the percentages stated or otherwise provided for in Section 6 or Section 7 of this Note, whichever is applicable, shall be borne by the carrier. If, by reconditioning any damaged package or contents, there shall result an enhanced value because of such reconditioning of such package or contents, such increased value shall be credited to the claim.

Section 9.—Where the application of percentages stated or otherwise provided for in Section 6 or Section 7 of this Note result in fractions of one egg, such fractions shall be increased to the next whole number.

[fol. 13] IN UNITED STATES DISTRICT COURT

MOTION OF ARMOUR & CO. FOR LEAVE TO INTERVENE—Filed February 4, 1953

Comes now, Armour and Company, an Illinois corporation, and moves the Court to permit it to intervene as an intervening plaintiff, and to file its intervening complaint in the above entitled cause, and alleges as follows:

(1) Armour and Company is a corporation organized under and existing by virtue of the laws of the State of Illinois, with principal office at Union Stock Yards, Chicago 9, Illinois.

(2) Armour and Company was a party to the proceedings before the Interstate Commerce Commission on Special Regulations, Eggs, in which the decision is set out in volume 284 of the reports of the Interstate Commerce Commission, at page 377 thereof, on February 4, 1952, said decision and such proceedings being more fully described in the complaint on file in this cause.

(3) This motion is made pursuant to, and Armour and Company is entitled, as a matter of right, to intervention under Section 2323 of Title 28, United States Code Annotated.

(4) Filed with the Court with this motion is the intervening complaint which Armour and Company desires to file in this cause.

Armour and Company, By (S.) F. H. Pope, Assistant Secretary, Paul E. Blanchard, Attorney.

(Corporate Seal.)

[File endorsement omitted.]

[fol. 14] IN UNITED STATES DISTRICT COURT

MINUTE ENTRY DATED FEBRUARY 4, 1953 GRANTING ARMOUR & CO. LEAVE TO INTERVENE

Mr. Irwin Clawson appeared in chambers on February 4, 1953, and on behalf of Armour and Company presented a motion asking leave to intervene in this case, and to said

motion was attached a proposed Intervening Complaint signed by Mr. Paul E. Blanchard, attorney for Armour and Company.

The plaintiff having no objection to said motion and there being no appearance so far on behalf of the defendants, the motion to intervene was granted. The court directed the intervenor to serve copy of the complaint upon the defendants.

[fol. 15] IN UNITED STATES DISTRICT COURT

INTERVENING COMPLAINT OF ARMOUR & CO.—Filed February 4, 1953

Comes now the intervening plaintiff, Armour and Company, and for cause of action, alleges as follows:

1. Intervening plaintiff, Armour and Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with principal office in the Union Stock Yards, Chicago, Illinois. Armour and Company is engaged in the marketing of eggs throughout the United States. It ships eggs by railroad from numerous states into other states. In the course of business it is a shipper of rehandled, rehandled and repacked, and storage eggs by railroad from various places of business in the various states of the United States to various destinations in other states of the United States. Intervening plaintiff, Armour and Company, was a party of record to the proceedings before the Interstate Commerce Commission, more fully described in the complaint of the Utah Poultry & Farmers Cooperative, plaintiff in this case, in which there was issued the decision of the Interstate Commerce Commission on Special Regulations, Eggs, set out in volume 284 of the reports of the Interstate Commerce Commission, at page 377 thereof, on February 4, 1952.

2. This intervening plaintiff, Armour and Company, adopts and incorporates by reference paragraphs 2 to 16 inclusive of the complaint filed herein by the plaintiff Utah Poultry & Farmers Cooperative.

3. This intervening plaintiff adopts and incorporates by reference herein Exhibits A and B attached to the complaint of the plaintiff.

4. Intervention is made herein pursuant to the right granted by Section 2323 of Title 28 of the United States Code Annotated. This intervening plaintiff, as hereinbefore alleged, was a party to the proceedings of the Interstate Commerce Commission.

Wherefore, intervening plaintiff, Armour and Company prays:

(1) That a court, constituted as required by Sections 2284 and 2325 of Title 28, United States Code Annotated, be con- [fols. 16-17] vened and other proceedings had as prayed in paragraphs 3 and 4 of the prayer contained in the complaint of the plaintiff, Utah Poultry & Farmers Cooperative.

(2) That, upon the final hearing of this complaint, the court so constituted shall enter a decree permanently suspending, enjoining, setting aside and annulling the said order of said Commission; that this court shall issue a mandatory injunction directing and commending said Commission to strike from its files the provisions of Supplement No. 17 to the Consolidated Freight Classification, above described; that this court shall construe the statutes involved and determine and state the correct principles of law controlling the disposition of said complaint before the Commission; shall determine the jurisdiction of the Commission in the premises; and shall also determine what, if any, findings of fact in said decision of the Commission are erroneous, or irrelevant and immaterial to the disposition of the complaint before the Commission for further hearing and decision by the Commission in accordance with the controlling principles of law determined by this court; or find and determine that intervening plaintiff is entitled to a further hearing before the Commission and a decision therein not inconsistent with the decision of this court.

(3) That intervening plaintiff have and recover of the defendants the proper costs of said suit; and

(4) That intervening plaintiff have such other and fur-

ther relief in the premises as may be lawful and as may be deemed by this court to be fit and proper.

Armour and Company, by (S.) F. H. Pope, Assistant Secretary, (S.) Paul E. Blanchard, Attorney.

(Corporate Seal.)

Attorneys: Paul E. Blanchard, Marcus Whiting, Armour and Company, Union Stock Yards, Chicago 9, Illinois.

[File endorsement omitted.]

* * * * * * *

[fol. 18] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Civil Action No. C8-53

UTAH POULTRY & FARMERS COOPERATIVE, Plaintiff, The Secretary of Agriculture of the United States, Intervening Plaintiff

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants*

MOTION OF SECRETARY OF AGRICULTURE FOR LEAVE TO INTERVENE—Filed February 26, 1953

To the Honorable Judges of the United States District Court for the District of Utah.

I

The Secretary of Agriculture of the United States, under Rule 24 of the Rules of Civil Procedure, hereby moves the Court for an order permitting him to intervene as a plaintiff in this action, so that he may make and establish the claims set forth in the proposed complaint attached hereto.

II

The Secretary of Agriculture was a party in interest in the proceeding before the Interstate Commerce Com-

mission entitled "No. 30030, *Special Regulations—Eggs*," out of which this court action arose; and he may intervene in this action as a matter of right, as contemplated [fol. 19] by 7 U.S.C. 1946 ed. sec. 1291 and 28 U.S.C. 1946 ed. (Supp. V) sec. 2323. For the convenience of the Court, there is quoted below said section 1291 of Title 7 of the United States Code, being section 201 of the Agricultural Adjustment Act of 1938:

"(a) The Secretary of Agriculture is authorized to make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Commission. Before hearing or disposing of any complaint (filed by any person other than the Secretary) with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, the Commission shall cause the Secretary to be notified, and, upon application by the Secretary, shall permit the Secretary to appear and be heard.

"(b) If such rate, charge, tariff, or practice complained of is one affecting the public interest, upon application by the Secretary, the Commission shall make the Secretary a party to the proceeding. In such case the Secretary shall have the rights of a party before the Commission and the rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. The liability of the Secretary in any such case shall extend only to liability for court costs.

"(c) For the purposes of this section, the Interstate Commerce Commission is authorized to avail itself of the cooperation, records, services, and facilities of the Department of Agriculture.

"(d) The Secretary is authorized to cooperate with and assist cooperative associations of farmers making complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products."

Wherefore, The Secretary of Agriculture prays that an order be entered permitting him to intervene in this action and to file the proposed complaint attached hereto.

Respectfully submitted by direction of the Secretary of Agriculture of the United States.

(S.) Charles W. Bucy, Associate Solicitor; Walter D. Matson, Attorney, Office of the Solicitor, United States Department of Agriculture, Washington 25, D. C.

[fol. 20] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

COMPLAINT—Filed February 26, 1953

I

Intervening plaintiff, the Secretary of Agriculture of the United States (herein sometimes called the Secretary), brings this complaint to set aside certain action, findings, and conclusions of the Interstate Commerce Commission (herein called the Commission) as set forth in the Commission's report (284 I.C.C. 377) dated February 4, 1952, in a proceeding before the Commission, entitled "No. 30630, *Special Regulations—Eggs.*" Reference is made to a copy of the said report which is attached as Exhibit A to the complaint of plaintiff Utah Poultry & Farmers Cooperative.

II

The jurisdiction of the Court is founded upon section 10 of the Administrative Procedure Act (5 U.S.C. 1946 ed. sec. 1009), sections 1336, 1398, 2284, and 2321-2325 of Title [fol. 21] 28, United States Code 1946 ed. (Supp. V), section 17 (9) of the Interstate Commerce Act (49 U.S.C. 1946 ed. sec. 17(9)), and section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1946 ed. sec. 1291). The United States of America is named as a party defendant

pursuant to section 2322 of Title 28, United States Code 1946 ed. (Supp. V).

III

The Commission is an administrative tribunal, created by the Act to Regulate Commerce approved February 4, 1887, 24 Stat. 379, with specifically vested powers and duties respecting interstate commerce under said Act and the various acts amendatory thereof and supplemental thereto, hereinafter collectively referred to as the Interstate Commerce Act.

IV

By order dated July 23, 1948, Division 2 of the Commission on its own motion instituted an investigation concerning the reasonableness and otherwise lawfulness of the special regulations of the railroads governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder, in connection with the transportation of shell eggs in interstate commerce, with a view to making findings and prescribing reasonable rules, regulations and practices relative to such transportation. A copy of the aforesaid order of July 23, 1948, is attached hereto as Exhibit A.

V

Of principal concern in No. 30030 was the amendment, filed to become effective July 24, 1948, wherein the carriers published a damage tolerance of 5 percent, which was intended to define or delimit their liability in respect to claims arising on shipments of eggs which had been "storage packed" or "rehandled and repacked" elsewhere than "at point of origin of the rail shipment." Such amended rules are set forth in Appendix B to the [fol. 22] Commission's report (284 I.C.C. 404, see plaintiff's complaint, Exhibit A). While No. 30030 was pending the carriers proposed to increase the foregoing damage tolerance from 5 to 6 percent and to establish a damage tolerance of 4 percent on eggs not repacked[1] at the rail

[1] The term "repacked" will be used herein to embrace both "storage packed" and "rehandled and repacked."

point of origin. The 4 and 6 percent damage tolerance rules are set forth in Appendix C to the Commission's report (284 I.C.C. 407; plaintiff's complaint, Exhibit A). By order of May 11, 1950, in I. & S. No. 5792, *Damage Tolerance on Shell Eggs*, Division 2 of the Commission suspended the new proposals and instituted an investigation into their lawfulness, which matter was disposed of with No. 30030.

VI

Hearings in No. 30030 were held by Commissioner Richard F. Mitchell in Chicago on July 26-27, 1949; in New York, December 15, 1949; in Washington, February 8, 1950; in Los Angeles, August 1, 1950; and in Chicago, September 7, 1950. Hearing Examiner Frank E. Mullen also sat with Commissioner Mitchell at the first Chicago hearing and at the Washington hearing. I. & S. No. 5792 was heard upon a common record with No. 30030 before Commissioner Mitchell in Chicago on September 7, 1950. The Secretary became a party in interest to the proceedings before the Commission and appeared by counsel and presented testimony in opposition to the damage tolerance rules under investigation. Such participation by the Secretary was in his capacity as representative of the agricultural community and in accordance with the general authorization and direction of Congress as stated in section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1946 ed. sec. 1291) and section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1946 ed. (Supp. V) sec. 1622). Following the issuance of a Hearing Examiners' proposed report, exceptions thereto were filed by [fol. 23] the Secretary and other parties; the issues were argued orally before the Commission; and the Commission's final report, herein complained of, was issued. The Commission's ultimate conclusions were that the damage tolerances in question were not limitations of common carrier liability, and that all of the railroad rules under investigation were just and reasonable and not otherwise unlawful, except for the measure of the damage tolerances, which the Commission found should be 3 percent for eggs repacked at the rail point of origin and 5 percent for eggs repacked elsewhere. The revised rules and damage tol-

erances were published by the railroads, were filed with and accepted by the Commission, and became effective May 1, 1952.

VII

On March 14, 1952, the Secretary filed with the Commission his petition for reopening, reconsideration, and reargument, a copy of which is attached hereto as Exhibit B. By order entered May 19, 1952, a copy of which is attached hereto as Exhibit C, the Commission denied that petition.

VIII

In the administrative proceeding before the Commission intervening plaintiff at all times contended, and he still believes, that the damage tolerance rules are unreasonable and unlawful under various sections of the Interstate Commerce Act. Except for intervening plaintiff's contention that such rules constituted unlawful limitations of common carrier liability, the Commission summarily disposed of his contentions without specific discussion (284 I.C.C. 377). In order to simplify the issues for this Court's determination, intervening plaintiff presses herein only the contentions that the damage tolerance rules are attempts to limit common carrier liability and are therefore null and void as a matter of law, and that the Commission erred in approving and accepting such damage tolerance rules.

[fol. 24] The Commission's report states in part (284 I.C.C. 401):

> The present and proposed regulations are not limitations of the carriers' liability in respect of damage to property transported by them. They constitute merely tariff rules and practices designed to relieve the carriers from paying claims for damages which are not attributable to their negligence but which result from the inherent nature of the commodity transported.

Intervening plaintiff alleges that the Commission's action, findings, and conclusions are based upon errors of law, are not supported by substantial evidence or adequate

findings, exceed the statutory powers of the Commission, and are unlawful, arbitrary, null and void, for the following reasons:

(1) The Commission erred in failing to recognize that the purpose of the damage tolerance rules is to limit substantially the liability of the carriers, contrary to common law and to section 20(11) of the Interstate Commerce Act (49 U.S.C. 1946 ed. sec. 20(11)).

(2) The Commission erroneously assumed that common carrier liability at common law and as imposed by section 20(11) of the Interstate Commerce Act (49 U.S.C. 1946 ed. sec. 20(11)) depends upon the existence or proof of negligence.

(3) The Commission erroneously assumed that the susceptibility of eggs to breakage by the application of force is an "inherent vice" as that phrase is used in the recognized exceptions to strict common carrier liability.

(4) The damage tolerance rules purport to limit common carrier liability regardless of even gross negligence or wilful intent on the part of the carrier or its agents.

(5) Since any attempt to limit common carrier liability is *per se* null and void (49 U.S.C. 1946 ed. sec. 20(11)), the Commission in accepting and in attempting to approve these damage tolerance rules acted in excess of its statutory powers.

(6) There is no factual basis of record for the distinction whereby eggs repacked at the rail point of origin are made subject to a 3-percent damage tolerance while eggs repacked elsewhere are made subject to a 5-percent damage tolerance.

[fol. 25] (7) Even assuming *arguendo* the validity of damage tolerance rules, the Commission's approval of such rules having nationwide application is not supported by substantial evidence or adequate findings.

IX

If the action, findings, and conclusions of the Commission as aforesaid are not permanently set aside, intervening plaintiff and the agricultural community which he represents will be irreparably damaged and they are without an adequate remedy at law.

Wherefore, intervening plaintiff prays that the Court will hold unlawful and set aside the report of the Commission entered February 4, 1952, in the proceeding entitled "No. 30030, *Special Regulations—Eggs*" (284 I.C.C. 377); will direct the Commission to reject and to strike from its tariff files the damage tolerance rules approved by such report; and will grant intervening plaintiff such other and further relief in the premises as to equity may appertain and as may be deemed by this Court fit and proper.

Respectfully submitted by direction of the Secretary of Agriculture of the United States.

(S.) Charles W. Bucy, Associate Solicitor, Walter D. Matson, Attorney, Office of the Solicitor, United States Department of Agriculture, Washington 25, D. C.

[fol. 26] EXHIBIT A TO COMPLAINT

Order

At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 23rd day of July, A. D., 1948.

No. 30030

Special Regulations—Eggs

The said division having under consideration the matter of special regulations governing descriptions, marks, inspection and delivery, and the handling of claims thereunder, applicable in connection with the transportation, in interstate or foreign commerce, of eggs from, to and between points in the United States, as published in Note 5 of Supplement No. 2 to Consolidated Freight Classification No. 18, Agents A. H. Greenly's I.C.C.-O.C. No. 62, Robert E. Boyle's, Jr. I.C.C. No. 106, Geo. H. Dumas' I.C.C. No. 31 and R. G. Raasch's I.C.C. No. 642; and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted by the said division, upon its own motion, into and concerning the reasonableness and otherwise lawful-

[fol. 45] IN UNITED STATES DISTRICT COURT

ORDER GRANTING LEAVE TO SECRETARY OF AGRICULTURE TO INTERVENE—March 12, 1953

This cause coming on to be heard on the motion of the Secretary of Agriculture of the United States for leave to intervene in and to be made a party to the above entitled cause and to file its separate complaint in said cause; the court upon consideration thereof and being fully advised in the premises finds that said motion should be granted.

It is therefore Ordered, Adjudged and Decreed that the said applicant for intervention be and is hereby given leave to intervene in and it is hereby made a party to the above entitled cause.

It is further Ordered that the said applicant for intervention may file instanter its separate complaint herein in the same manner and with like effect as if originally filed in this cause.

Dated: March 12, 1953.

(S.) Willis W. Ritter, United States District Court Judge.

[File endorsement omitted.]

[fol. 46] IN UNITED STATES DISTRICT COURT

MOTION OF SWIFT & CO. FOR LEAVE TO INTERVENE—Filed March 12, 1953

Now Comes Swift & Company, an Illinois corporation, and moves the Court to permit it to intervene as an intervening plaintiff, and to file its intervening complaint in the above-entitled cause, and alleges as follows:

(1) Swift & Company is a corporation organized under and existing by virtue of the laws of the State of Illinois, with principal office at the Union Stock Yards, Chicago 9, Illinois.

(2) Swift & Company was a party to the proceedings before the Interstate Commerce Commission on Special Regulation, Eggs, in which the decision is set out in

volume 284 of the reports of the Interstate Commerce Commission, at page 377 thereof, on February 4, 1952, said decision and such proceedings being more fully described in the complaint on file in this cause.

(3) This motion is made pursuant to, and Swift & Company is entitled, as a matter of right, to intervention under, Section 2323 of Title 28, United States Code Annotated.

(4) Filed with the Court with motion is the intervening complaint which Swift & Company desires to file in this cause.

Swift & Company, Union Stock Yards, Chicago 9, Illinois, by J. P. Staley, its attorney, 4115 S. Packers Ave., Chicago 9, Illinois.

[File endorsement omitted.]

[fol. 47] IN UNITED STATES DISTRICT COURT

ORDER GRANTING LEAVE TO SWIFT & CO. TO INTERVENE—March 12, 1953

This cause coming on to be heard on the motion of Swift & Company for leave to intervene in and to be made a party to the above-entitled cause, and to file its separate complaint in said cause, the Court, upon consideration thereof, and being fully advised in the premises, finds that said motion should be granted.

It is therefore Ordered, Adjudged and Decreed that the said applicant for intervention be, and it is hereby given leave to intervene in, and it is hereby made a party to, the above-entitled cause.

It is further Ordered that said applicant for intervention may file instanter its separate complaint herein in the same manner and with like effect as if originally filed in this cause.

Enter:

(S.) Willis W. Ritter, United States District Court Judge.

Dated 3/12/53, 1953.

[File endorsement omitted.]

ness, of the regulations described in the next preceding paragraph hereof, with a view to making such findings in the premises and prescribing such just, reasonable and otherwise lawful rules, regulations and practices, as the facts and circumstances shall appear to warrant.

It is further ordered, That all common carriers of property by railroad parties to the said tariff schedules be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of the respondents; and that notice to the public be given by posting a copy of this order in the office of the Secretary of the Commission.

And it is further ordered, That this proceeding be, and the same is hereby, assigned for hearing September 23, 1948, 8:30 o'clock A.M., United States Standard Time (9:30 A.M. District of Columbia Daylight Saving Time), at the office of the Interstate Commerce Commission, Washington, D. C., before Examiner Barber.

By the Commission, Division 2.

W. P. Bartel, Secretary.

(Seal.)

[fol. 27] EXHIBIT B TO COMPLAINT

Before the Interstate Commerce Commission
Special Regulations—Eggs; Damage Tolerance on Shell Eggs

No. 30030

No. I. & S. 5792

Petition by the Secretary of Agriculture for Reopening, Reconsideration, and Reargument, and for Postponement of Orders

Chas. B. Bowling, Chief, Leon Schilt, Transportation Specialist, Traffic Management Division, Transportation and Warehousing Branch, Production and Marketing Administration; Charles W. Buey, Associate Solicitor, Walter D. Matson, Attorney, United States Department of Agriculture, Washington 25, D. C.

Dated March 14, 1952.

[fol. 28] Before the Interstate Commerce Commission
Special Regulations—Eggs, Damage Tolerance on Shell Eggs

No. 30030

No. I. & S. 5792

Petition by the Secretary of Agriculture for Reopening, Reconsideration, and Reargument, and for Postponement of Orders

Introductory Statement

The final report of the Commission in these proceedings, bearing the name of Commissioner Mitchell, who presided at the several hearings, is in the majority of its paragraphs the same as the proposed report of the examiners. In our brief of exceptions, filed July 9, 1951, we pointed out 18 serious errors. But for the correction of obvious mathematical mistakes made by respondents and adopted by the examiners (see Exception 12), the final report contains all of the 18 original errors. Moreover, the final report contains various statements and conclusions that were not contained in the proposed report and which we contend are not supported by the evidence. In Section A of this petition we will discuss various errors made in the final report that were not in the proposed report. [fol. 29] Section B will relate to other matters as to which the Commission erred in weighing the evidence of record. In Section C we will discuss errors of law contained in the final report.

Exceptions

A. *Errors in Final Report but Not in Proposed Report.*

A-1. *The Commission erred in omitting, at sheet 26, the following sentence found at sheet 15 of the proposed report: "The possibility of collusion between the consignor and consignee with respect to claims for damage is extremely remote."*

It will be recalled that at the time the investigation in No. 30030 was instituted representatives of the respondents,

and particularly of the Consolidated Classification Committee, had just made some allegations and insinuations reflecting upon the honesty of shippers and receivers of eggs. At page 65 of our brief (dated February 15, 1951) we made the following request:

> In order to clear the names and reputations of shippers and receivers of eggs who have been villified by respondents' unjust and unfounded allegations and insinuations, the Commission should specifically find that upon this full record there is no evidence whatever of the existence of a "claim racket" or of any other dishonest or illegal practice on the part of shippers or receivers or both, for it is clear that the supposed culprits are made of the same cloth as the classic "mysterious stranger" of criminal trial fame.

This subject was dealt with at length at pages 49 to 65 of our brief. At pages 665-7 of the Washington transcript, Witness Winters explained why collusion between the consignor and consignee does not and could not exist; and respondents offered no factual evidence [fol. 30] to dispute this. The shippers and receivers of eggs stand exonerated on the record but this is not reflected at any point in the final report.

In view of the seriousness of the allegations made by respondents' representatives, we urge the Commission to find, in accordance with our Requested Finding 6 (Brief, p. 76), that there is no evidence of record of the existence of a "claim racket" or of any other dishonest or illegal practice on the part of egg shippers or egg receivers or both, or at least to adopt the above-quoted sentence from the proposed report.

A-2. *The Commission erred in failing to find that damage to egg shipments caused by rough handling in transit is readily recognized.*

The proposed report at sheet 15 stated protestants' position and contentions with respect to recognizing transit damage. Since no further comment or finding was made at that point we took no exception to those statements in the

proposed report. Our additional contention that "such damage does not result from packing operations" was characterized by the proposed report as "highly problematical"; and our Exception 4 was directed thereto. The final report, by substituting "these contentions" for "this contention", results in a finding by the Commission that all of our contentions restated at sheet 26 "are highly problematical". Such a finding is contrary to the weight of the evidence and to ordinary human experience.

"Claims in amounts exceeding 50 percent of the revenue on the entire egg traffic to New York" (Final Report, sheet [fol. 31] 32) could not have been based on damage where there was controversy as to whether this or that particular egg was already checked when the case was tendered for shipment. These claims instead involved numerous cases of eggs dripping with *fresh* egg yolks and albumen; and the Railroad Perishable Inspection Agency inspector and the consignee's representative had no difficulty whatever in determining the cause. According to respondents' Witness Hodkinson: ". . . those claims wouldn't be paid if there wasn't evidence of damage" (Tr. 87).

The final report at sheet 38 states:

> Protestants take the position that rough handling in transit is the most important single cause of damage to eggs; and that *the large claims for such damage would not have been approved by the railroads unless they were satisfied as to the fact of railroad liability.* (Emphasis supplied.)

As stated at sheet 26, "All claims must be supported by a notation *to that effect*, on the paid freight bill and signed by the consignee and respondents' inspector." (Emphasis supplied.) The phrase "to that effect" is meaningless in its context on sheet 26, since it has no antecedent. The fact is that transit damage to an egg shipment is readily recognized by the joint inspectors representing consignee and carrier; and the damage claim is documented by their notations *to that effect* on the freight bill. In this connection please see pages 37 to 41 of our brief.

[fol. 32] A-3. *The Commission erred in minimizing the care exercised by egg shippers.*

At sheet 15, the proposed report states:

> The record in these proceedings establishes, however, that shippers use extreme care in preparing shipments of eggs. They desire good trade relationships, customer good will, and avoidance of the delay incident to the settlement of damage claims. As stated by a witness, his company desires to have sound eggs at destination rather than damage claims.

These findings of the examiners, based on substantial evidence of record (please see our brief, pp. 12-15 and 44-47), were omitted from the corresponding paragraph on sheet 26 of the final report. Instead, the final report stresses the fact, which we frankly and readily admit, that "in grading and packing eggs absolute perfection is commercially impossible" (Final Report, sheet 27). However, as shown at pages 13-14 of our brief, Departmental surveys conducted under ideal conditions, in which individual eggs were candled, proved conclusively that the present day pack is close to 100 percent perfect. No one in the egg trade or in any other commercial activity thinks in terms of "absolute perfection". The important fact is that the case of eggs which is shipped today is commercially sound.

A-4. *The Commission erred in minimizing the effect of defective or unfit rail equipment.*

At sheet 33 of the final report is a discussion of testimony by a witness for Fairmont Foods Company, to the effect that old and defective refrigerator cars were an important contributing factor to transit damage. The final report then adds:

> [fol. 33] On this record we are unable to determine that the use of cars built during the period indicated resulted in damage in transit to eggs.

In contrast, the final report at sheet 25 states that "quality of equipment . . . contributed to the damage during the war and for some time thereafter." All of the evidence of

record on this subject is abstracted and discussed at pages 34 to 37 of our brief; and, based on this, the logical conclusion to be reached is that defective or unfit rail equipment did contribute substantially to the number and amounts of damage claims.

> A-5. *The Commission erred in minimizing the likelihood of rough handling incident to the car-float service at New York.*

At sheet 34 is a reference to evidence adduced by Armour & Company, whose experience had indicated a strong likelihood that a principal cause of damage at New York could be traced to the car-float service. The final report adds this sentence:

> The record indicates that shipments moving all rail in connection with New York Central delivery contained, at least, as high a percentage of damage as did the car-floated shipments.

Exhibit 38 is a study of Armour shipments during 1948 and 9 months of 1949. Of the six non-floated cars in 1948, five arrived in good order and one was *wrecked.* That car had $1015.86 damage. Of three non-floated cars in 1949, two arrived in good order and the third had $69 damage. In contrast, 53 cars were floated to Brooklyn in 1948, of which 26 had damage averaging $266.77; and in 1949, 35 cars were floated, of which 19 had damage averaging $323.47. The added sentence, therefore, reflects a very strained interpretation of the evidence.

> [fol. 34] A-6. *The Commission erred in minimizing the extent of rough handling during switching operations.*

At pages 38, 39, 74, and 75 of our brief we discussed the evidence as to rough handling during switching operations, including testimony of eye witnesses. Obviously the carriers themselves, who "did that part of the investigating" (Jensen, Tr. 895-6), were in the best position to develop the facts, but they failed to disclose to the Commission the results of their investigation. The testimony of protestant

Witness Winters, who saw egg cars being humped in the Croxton Yards of the Erie Railroad (Tr. 461-2, 470, 472-3) was the only evidence on this question mentioned in the proposed report, and such discussion was limited to two sentences (sheets 21-22). The final report adds (sheet 39): "The witness did not know, however, whether the cars were loaded or empty." No one disputed the fact that cars placarded "DO NOT HUMP" were being handled contrary to instructions; and no carrier witness denied that this is the usual practice. The final report is in error in thus passing over substantial evidence of record with respect to the principal cause of the extensive egg damage claims.

B. *Matters as to which the Commission Erred in Weighing the Evidence of Record*

B-1. *The Commission erred in summarily disposing of the issues under sections 1, 2, 3, and 6.*

The proposed report gave no consideration whatever to our contentions that the damage tolerance rules under investigation contravene sections 1, 2, 3, and 6, nor to the ex- [fol. 35] tensive evidence adduced by protestants bearing on these issues. Exceptions 16, 17, and 18 were directed to such omissions. The final report summarily disposes of these issues, and our Requested Findings 2, 3, and 4 (Brief, pp. 75-76), by the *pro forma* statement in its first paragraph:

> Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been given consideration and found not justified.

While such catch-all treatment may suffice for miscellaneous minor contentions which could not be determinative of essential rights, we submit that the minimum standards of good administrative procedure require a fuller treatment of issues, any one of which, if decided in accordance with our views, would result in condemnation of these damage tolerance rules. Where, as here, several distinct issues have been raised, and each extends to the merits of the controversy, it is not sufficient for the Commission to choose

just one and to find as to it that the allegation of unlawfulness is ill founded.

B-2. *The Commission erred in failing to find the damage tolerance rules unreasonable and unlawful under section 1.*

This exception corresponds to Exception 16 to the proposed report. A succinct abstract of the evidence on this subject and reasons for following prior decisions are to be found at pages 65-66 of our brief.

B-3. *The Commission erred in failing to find the damage tolerance rules unjustly discriminatory in contravention of section 2 and unduly prejudicial in contravention of section 3.*

This exception corresponds to Exception 17 to the proposed report, in connection with which the Commission is referred to pages 66-67 of our brief.

[fol. 36] B-4. *The Commission erred in failing to find that the tariff provisions under investigation do not comply with section 6 of the Commission's Tariff Circular 20.*

This exception corresponds to Exception 18 to the proposed report. Please see pages 3, 4, 47, 48, 49 and 67 of our brief. Aside from all other objections, these tariff provisions should be condemned because they are mathematically unsound and impossible of rational application. The record of experience under the present 5 percent tolerance rule (Brief, pp. 47-49) should be conclusive of this point. The proposed rules are subject to the same criticisms. While the order of investigation in No. 30030 contemplated the prescription of "reasonable rules, regulations and practices" (Final Report, sheet 2), the Commission's final order of February 4, 1952, does not even require the respondents to clarify these ambiguous and unworkable tariff provisions.

C. *Errors of Law with Reference to Matters as to Which There is No Area for the Exercise of Discretion by the Commission.*

C-1. *The Commission erred in failing to find the present and proposed damage tolerance rules unlawful and void under section 20(11).*

This exception embraces Exceptions 13, 14, and 15 to the proposed report and our Requested Findings 1 and 5 (Brief, pp. 75, 76). Pages 67 to 73 of our brief deal with this issue.

The Commission's rationalization of the damage tolerances notwithstanding section 20(11) is to be found on sheets 39 and 41 of the final report, as follows:

> [fol. 37] The present and proposed regulations are not limitations of the carriers' liability in respect of damage to property transported by them. They constitute merely tariff rules and practices designed to relieve the carriers from paying claims for damages which are not attributable to their negligence but which result from the inherent nature of the commodity transported.
>
> * * *
>
> Eggs containing checks, blind or visible, are to a certain extent in a damaged condition. In other words, the shells on those eggs are defective or cracked. These defects or cracks, unlike breaks or fractures in the bones of animate things, do not heal or knit with the passage of time. Any change in the condition of a defect or crack in an egg shell can result only in its enlargement, a healing or knitting thereof not being possible. The slightest movement in transportation may cause additional damage to such eggs. Such damage cannot be imputed to the negligence of the carrier but rather to the inherent nature of the commodity. . . .

In the first place, the Commission has overlooked the fact that common law liability and the liability imposed upon respondents by section 20(11) *does not depend upon the existence or proof of negligence.* Elliott, *Treatise on the Law of Railroads,* Vol. 4 § 2201, p. 606; Thompson, *Com-*

mentaries on the Law of Negligence 2d Ed., Vol. V, § 6472, p. 889; 13 *Corpus Juris Secundum* 131, 132.

Secondly, as a matter of law, the susceptibility of eggs to breakage by the application of force is not an "inherent vice" as that phrase is used in the exceptions to strict common carrier liability. Thompson, *op. cit.*, p. 903; Hutchinson, *Treatise on the Law of Carriers*, 3d Ed., Vol. 1, § 334, p. 341; Michie, *Treatise on the Law of Carriers*, Vol. 1, § 1003, pp. 764-6. Being fragile, eggs are in the same [fol. 38] category as cast iron pipe, which is also prominent in respondents' damage claim statistics. Fragility is not a *cause* of damage but is a transportation characteristic which is always considered in fixing freight rates for fragile articles. The mere fact that within the commercially sound case of 360 eggs there may be scattered an average of seven blind checks does not remove that case from the general rule and place it in the exception which would necessitate proof of negligence before a shipper could recover. There is not an iota of evidence in the record to support the Commission's assumption that the type of damage certified by the joint inspectors at New York, where the damaged cases are found dripping with fresh egg yolks and albumen, should be imputed to the seven blind checks that were so minute they escaped detection at the packing plant; yet on this unrealistic assumption hangs the entire rationale legalizing these damage tolerances.

At sheet 5 of the proposed report it is stated:

> Respondents take the position that they are not attempting by the proposed regulations to limit carrier liability, in that they are directed against losses due to the inherent nature of shell eggs rather than against losses caused by the carriers; . . .

At sheet 10 of the final report this contention of respondents is restated as a conclusion by the Commission. That conclusion is not supported by substantial evidence of record and is erroneous as a matter of law.

A simple example will illustrate how respondents would limit their liability by a 5 percent damage tolerance. The [fol. 39] following values per dozen are assumed: sound eggs, 60 cents; checked eggs, 50 cents; cracked eggs, 30

cents; smashed eggs, loss. When packed the commercially sound case of 30 dozen eggs is worth $18; and it will bring $18 even though it actually contains 7 blind checks that escaped detection at the packing plant. Assume the case is damaged and 6 cracked eggs, 12 smashed eggs, and 6 checked eggs are found in the reconditioning process. The damage sustained is as follows:

6 *cracks,*	damage	15 cents
12 *loss,*	damage	60 cents
6 *checks,*	damage	5 cents
Totals 24 *eggs,*	damage	80 cents

The carriers take the 5 percent tolerance and call it 18 *eggs* which they subtract from 24 *eggs* (cracks; loss, and checks, combined), which leaves 6 *eggs*. Then they say, "we will honor the claim for 6/24 of 80 cents"; and the claim is settled, and liability is limited to 20 cents or 25 percent of the money damage sustained. In this simple illustration the carriers would avoid not 5 percent but 75 percent of their liability. Obviously, the extent to which liability is thus limited will vary, dependent upon the numbers and the proportions of cracked eggs, smashed eggs, and checked eggs; but the damage tolerance rule will always result in a substantial limitation of liability. Moreover, the rule has the same effect *regardless of admitted negligence* on the part of a carrier.

We have not forgotten the original seven blind checks. After this damaged case of eggs has been reconditioned and [fol. 40] the extent of damage certified by the joint inspectors, there will still be left in the case *at least* seven checked eggs which escaped detection in the reconditioning process. This was demonstrated conclusively by Witnesses Winters, Wilharm, and Geurkink, as shown at pages 17 to 20 of our brief. The carriers have never been asked to pay for the seven blind checks. The damage which the joint inspectors certify is never more than the damage for which respondents as common carriers should be fully liable.

C-2. The Commission erred in failing expressly to reject respondents' theory of "normal expectancy."

In respondents' proposed 4 and 6 percent damage tolerance rules there is included 1 percent for "normal expectancy" of transit damage (Jensen, Tr. 864). Respondents' theory is that there is, with respect to eggs, watermelons, cast iron pipe, and indeed all other fragile commodities, a measurable "normal expectancy" of transit damage which should be excluded in determining common carrier liability. We think the Commission recognized that this factor, at least, in respondents' proposals is clearly an attempt to limit common carrier liability, which is forbidden by section 20(11), since the last paragraph of the final report directs the reduction of the damage tolerances from 4 and 6 percent to 3 and 5 percent, respectively.

As in Exception C-1, *supra*, a contention of respondents found on sheet 5 of the proposed report is restated at sheet 10 of the final report as a conclusion by the Commission. The conclusion reads:

> [fol. 41] These regulations merely establish a means to determine the amount of damage existing at the time the shipment is received by the carrier and *the amount of damage resulting solely during transportation* because of the inherent nature of the shipment. (Emphasis supplied.)

To clarify the report this conclusion should be restored to its proper status as an unwarranted contention of respondents; and respondents' theory of "normal expectancy" should be expressly rejected.

Please see in this connection page 73 of our brief and Exception 11 to the proposed report.

Conclusion

We renew all 18 of our exceptions to the proposed report since, as previously indicated, the same errors persist in the final report.

The final report contains important factual findings which are not supported by substantial evidence on the record as a whole; and it contains conclusions which are erroneous as a matter of law.

Whereas the investigation in No. 30030 was originally instituted "with a view to . . . prescribing reasonable rules, regulations and practices," little has been accomplished other than the approval of carrier conceived proposals designed to relieve them in large measure from the payment of damage claims for which they are fully liable at common law and under section 20(11).

The legal principles involved in these proceedings permeate the body of transportation law; and the decision of the Commission as a precedent will affect the transportation of every commodity. It is therefore most [fol. 42] important that sound conclusions be reached. We urge the Commission to reconsider its decision of February 4, 1952, and, upon reconsideration, to revise its report to correct the errors pointed out in this petition, and to make the findings set forth at pages 75 and 76 of our brief.

Oral Argument Requested

It is requested that this matter be assigned for reargument before the entire Commission, and that not less than 2¼ hours be allotted counsel for protestants collectively.

These requests are based upon the importance of these proceedings, their present posture, and the complexity of the legal and factual issues. Some of the factual errors we desire opportunity to discuss involve Departmental studies the results of which were adduced at the Commission's request, as contemplated by section 201 of the Agricultural Adjustment Act of 1938.

We do not believe this matter could be adequately presented in a shorter time than that requested; an attempt to do so could only result in confusion and would serve no useful purpose.

Postponement of Orders Requested

For the purpose of maintaining the status quo it is requested that the effectiveness of the Commission's orders of February 4, 1952, be postponed pending reconsideration of these proceedings by the Commission.

[fol. 43] Respectfully submitted, by direction of the Secretary of Agriculture of the United States.

Chas. B. Bowling, Chief, Leon Schilt, Transportation Specialist, Traffic Management Division,

Transportation and Warehousing Branch, Production and Marketing Administration; Charles W. Buey, Associate Solicitor, Walter D. Matson, Attorney, United States Department of Agriculture, Washington 25, D. C.

[fol. 44] EXHIBIT C TO COMPLAINT

Order

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 19th day of May, A. D. 1952.

No. 30030

Special Regulations—Eggs

Investigation and Suspension Docket No. 5792

Damage Tolerance on Shell Eggs

Upon further consideration of the record in the above-entitled proceedings, and upon consideration of petitions by (1) the Secretary of Agriculture, (2) the Secretary of the Army, and (3) National Poultry, Butter and Egg Association, Pacific Dairy & Poultry Association, New York Mercantile Exchange, Zenith Godley Co., Inc., Fairmont Foods Company, Armour and Company, Wilson & Co., Inc., The Cudahy Packing Company, and Swift & Company, for reopening, reconsideration and reargument; the reply thereto by the respondent rail carriers; and it appearing that the reasons set forth in said petitions in support thereof are not sufficient to justify reopening the proceeding for reconsideration and reargument:

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission.

W. P. Bartel, Secretary.

(Seal.)

It is further ordered, that:

(1) the name of Bryan P. Leverich, whose address is 404 Union Pacific Building, 10 South Main Street, Salt Lake City 1, Utah, be entered as applicants' attorney of record in this action;

(2) copies of all answers, pleadings, motions, notices, orders and other documents in said action be served on Applicants' attorney of record;

[fol. 63] (3) applicants' proposed answer to the complaint herein, of which the original copy is attached hereto, be accepted and filed of record, and

(4) applicants, on their own behalf and, as provided in Rule 23 of the Federal Rules of Civil Procedure, on behalf of such other persons or corporations as may have an interest, be given an opportunity to be heard on any application to this Court for any decree, injunction, order, determination and finding with respect to the aforesaid report and order of the Commission, dated February 4, 1952, and the tariffs published and filed with the Commission in conformity therewith.

(S.) Willis W. Ritter.

Dated April 13, 1953.

[fol. 64] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

PLEADING FOR INTERVENERS, RAILROAD COMPANIES—Filed April 13, 1953

Applicants for intervention herein for their pleading setting forth the defenses for which intervention is sought, aver as follows:

1. Applicants are common carriers by railroad in interstate and foreign commerce and, as such, are subject to the provisions of Part I of the Interstate Commerce Act and to the jurisdiction of the Interstate Commerce Commission with respect to numerous phases of their opera-

[fol. 48] IN UNITED STATES DISTRICT COURT

INTERVENING COMPLAINT OF SWIFT & CO.—Filed March 12, 1953

Comes Now the intervening plaintiff, Swift & Company, and for its cause of action, alleges as follows:

1. Intervening plaintiff, Swift & Company, is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with principal office in the Union Stock Yards, Chicago, Illinois. Swift & Company is engaged in the marketing of eggs throughout the United States. It ships eggs by railroad from numerous states into other states. In the course of business it is a shipper of rehandled, rehandled and repacked, and storage eggs by railroad from various places of business in the various states of the United States to various destinations in other states of the United States. Intervening plaintiff, Swift & Company, was a party of record to the proceedings before the Interstate Commerce Commission, more fully described in the complaint of the Utah Poultry & Farmers Cooperative, plaintiff in this case, in which there was issued the decision of the Interstate Commerce Commission on Special Regulations, Eggs, set out in volume 284 of the reports of the Interstate Commerce Commission, at page 377 thereof, on February 4, 1952.

2. This intervening plaintiff, Swift & Company, adopts and incorporates by reference paragraphs 2 to 16 inclusive of the complaint filed herein by the plaintiff, Utah Poultry & Farmers Cooperative.

3. This intervening plaintiff adopts and incorporates by reference herein Exhibits A and B attached to the complaint of the plaintiff.

4. Intervention is made herein pursuant to the right granted by Section 2323 of Title 28 of the United States Code Annotated. This intervening plaintiff, as hereinbefore alleged, was a party to the proceedings of the Interstate Commerce Commission.

Wherefore, intervening plaintiff, Swift & Company, prays:

(1) That a court, constituted as required by Sections 2284 and 2325 of Title 28, United States Code Annotated,

be convened and other proceedings had as prayed in paragraphs 3 and 4 of the prayer contained in the complaint of the plaintiff, Utah Poultry & Farmers Cooperative.

[fol. 49] (2) That, upon the final hearing of this complaint, the court so constituted shall enter a decree permanently suspending, enjoining, setting aside and annuling the said order of said Commission; that this court shall issue a mandatory injunction directing and ordering said Commission to strike from its files the provisions of Supplement No. 17 to the Consolidated Freight Classification, above-described; that this court shall construe the statutes involved and determine and state the correct principles of law controlling the disposition of said complaint before the Commission; shall determine the jurisdiction of the Commission in the premises; and shall also determine what, if any, findings of fact in said decision of the Commission are erroneous, or irrelevant and immaterial to the disposition of the complaint before the Commission for further hearing and decision by the Commission in accordance with the controlling principles of law determined by this court; or find and determine that intervening plaintiff is entitled to a further hearing before the Commission and a decision therein not inconsistent with the decision of this court.

(3) That intervening plaintiff have and recover of the defendants the proper costs of said suit; and

(4) That intervening plaintiff have such other and further relief in the premises as may be lawful and as may be deemed by this court to be fit and proper.

Swift & Company, Union Stock Yards, Chicago 9, Illinois, by (S.) J. P. Staley, its attorney, 4115 S. Packers Ave., Chicago 9, Illinois.

[File endorsement omitted.]

[fol. 50] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed March 13, 1953

Comes now the United States of America, defendant, and, for answer to the complaint of the plaintiff filed in the above-captioned action, says:

I

1. On July 23, 1948 the Interstate Commerce Commission, Division 2, instituted an investigation, No. 30030, upon its own motion concerning the reasonableness and otherwise lawfulness of certain "Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder," (hereinafter referred to as "damage-tolerance rules") in respect of the transportation by railroad of shell eggs, as published in the Consolidated Freight Classification, as amended to become effective July 24, 1948.

2. Of principal concern in Docket 30030 was the amendment to become effective July 24, 1948, filed by all common carriers of property by railroad, respondents in Docket No. [fol. 50-a] 30030, establishing a tolerance of 5% under which they intended to define or limit their liability in respect to claims arising on carload and less than carload shipments of eggs which are "storage packed" or "rehandled and repacked" elsewhere than "at point of origin of the rail shipment." While Docket 30030 was pending, the carriers proposed to increase the foregoing damage tolerance from 5 to 6 percent on repacked eggs and a tolerance of 4 percent on eggs not repacked at the rail point of origin. The Commission suspended the amendment and instituted an investigation (I&S No. 5792) which was assigned for hearing and disposition along with Docket No. 30030.

3. Hearings in No. 30030 were held by Commissioner

Richard F. Mitchell on July 26-27, 1949; December 15, 1949; February 8, 1950; August 1, 1950 and September 7, 1950.

4. The Secretary of Agriculture became a party in interest to the proceedings before the Commission and appeared by counsel and presented testimony in opposition to the damage-tolerance rules under investigation.

5. Such participation by the Secretary of Agriculture was in his capacity as representative of the agricultural community and in accordance with the general authorization and direction of Congress as provided in Section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1946, ed. sec. 1291) and Section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1946 ed. (Supp. V) sec. 1622).

6. Pursuant to Federal Property and Administrative Services Act of 1949, 63 Stat. 377 and Statement of Areas of Understanding between Department of Defense and General Services Administration, 15 F.R. 6938, and Delegation of Authority to the Department of the Army, the Secretary of the Army represented by the Office of Judge Advocate General participated in these proceedings on behalf of the executive agencies of the Government which had an interest therein by reason of their activities as shippers.

[fol. 50-b] 7. The Secretaries of the Army and Agriculture both contended before the Commission, and still contend, that the damage-tolerance rule as a tariff rule proposed by the railroads and later approved by the Commission, as discussed hereinafter, constituted a "limitation of liability in contravention of the provisions of Section 20(11) of the Interstate Commerce Act."

8. On February 4, 1952 the Interstate Commerce Commission approved and accepted such limitation, as reported in Volume 284 of the published reports of the Commission's decisions at page 377 thereof.

9. The Commission's ultimate conclusions were that the damage tolerances in question were not limitations of common carrier liability, and that all of the railroad rules under investigation were just and reasonable and not otherwise unlawful, except for the measure of the damage tolerances, which the Commission found should be 3% for eggs repacked at the rail point of origin and 5% for eggs

repacked elsewhere. The revised rules and damage tolerances were published by the railroads, were filed with and accepted by the Commission, and became effective May 1, 1952.

10. On March 14, 1952 the Secretary of Agriculture filed with the Commission his petition for reopening, reconsideration and reargument. On April 11, 1952 the Secretary of the Army filed with the Commission his petition for reopening, reconsideration and reargument. On April 21, 1952 the complainant, Utah Poultry & Farmers Cooperative, a Utah corporation, filed with the Commission a petition for reopening, reconsideration and reargument.

11. On May 19, 1952 the Interstate Commerce Commission entered its order denying the requests for reconsideration.

[fol. 50-c] 12. The complainant, the Utah Poultry & Farmers Cooperative, a Utah corporation, was a party to all the proceedings before the Interstate Commerce Commission and, on January 21, 1953, filed suit against the Interstate Commerce Commission and the United States of America in this Court praying this Court to enter a decree permanently enjoining, setting aside and annulling the order of the Commission. The Secretary of Agriculture has filed a motion to intervene and an intervening complaint seeking similar relief.

13. The United States of America, as a shipper represented by the Secretary of the Army before the Interstate Commerce Commission, opposed the damage-tolerance rule, but would be foreclosed from presenting its views as a shipper in this cause if the United States, as statutory defendant, filed an answer defending the order attacked herein.

14. Under Section 2323, Title 28, United States Code, the Interstate Commerce Commission and the railroads may, on their own motion and as of right, appear as parties and defend the order of the Commission, and such defense may be maintained irrespective of the position taken by the United States as statutory defendant.

15. It appears to the United States, as statutory defendant; that there is substantial reasons why the order of the Commission involved herein is invalid, not in ac-

cordance with law, in excess of the authority of the Commission, and is not supported by substantial evidence.

II

16. In consideration of the above matters, and in order that the interest of the United States of America as a shipper may be presented to the Court and that the issues involved in this proceeding may thus be fully [fol. 50-d] litigated, the United States of America as a statutory defendant admits each and every allegation of the complaint.

Wherefore, the United States of America prays that the Court hold unlawful and set aside the order of the Commission entered February 4, 1952 in the proceeding entitled "No. 30030, Special Regulations—Eggs" (284 I.C.C. 377); direct the Commission to reject and to strike from its tariff files the damage-tolerance rules approved by such report; and grant such other and further relief in the premises as may be deemed fit and proper.

By the United States of America,

(S.) James E. Kilday, Charles S. Sullivan, Jr., Special Assistants to the Attorney General, Edward P. Hodges, Acting Assistant Attorney General, Scott M. Matheson, United States Attorney.

[fol. 51] [File endorsement omitted]

[fols. 52-53] In United States District Court

Answer of the Interstate Commerce Commission to Complaint of the Secretary of Agriculture—Filed March 16, 1953.

The defendant, Interstate Commerce Commission, answers the complaint of the Secretary of Agriculture as follows:

I

The answer of defendant Commission to the original complaint of the Utah Poultry & Farmers Cooperative, a

Corporation, heretofore filed herein, is hereby adopted and herein incorporated by reference as sufficient answer to allegations in paragraphs I to VII, inclusive, of the complaint of the Secretary of Agriculture.

II

The defendant Commission specifically denies the allegations in paragraphs VIII and IX of the complaint of the Secretary of Agriculture.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission, by (S.) Allen Crenshaw, Associate Chief Counsel; (S.) Edward M. Reidy, Chief Counsel, of Counsel.

[File endorsement omitted.]

[fol. 54] IN UNITED STATES DISTRICT COURT

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—Filed March 16, 1953

The Interstate Commerce Commission, one of the defendants in the above-entitled case, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

The defendant Commission admits the allegations of paragraphs 1, 2, and 3, of the complaint, insofar as the same are material to the issues herein and are not contrary to the findings and conclusions as set forth in its report of Febru-

ary 4, 1952, (Exhibit A to Complaint), except that the allegations in lines 9 to 17, beginning with the word "'This" and ending with the word "thereof", are specifically denied.

II

The defendant Commission denies the allegations in paragraph 4 of the complaint, insofar as the same are contrary to the facts stated in said report of February 4, 1952, or as contained in the Commission record herein, however specifically admitting the allegations in the last 6 lines of said paragraph.

III

The defendant Commission avers that the allegations contained in paragraphs 5, 6, 7, 8, and 9 of the complaint are an incomplete statement of the procedure and facts disclosed by the Commission record and as stated in said report of February 4, 1952, and admits said allegations only insofar as they are not contrary to facts shown by said record and report.

IV

The defendant Commission avers that allegations in paragraphs 10, 11, 12, and 13 of the complaint are in part argumentative and, as such, may not be considered, and denies the factual allegations therein and the legal correctness of complaint conclusions based thereon.

[fol. 55]

V

The defendant Commission denies the allegations in paragraph 14 of the complaint.

VI

The defendant Commission avers that the allegations in paragraphs 15 and 16 of the complaint relate to alleged facts not a part of the Commission record, and are not material to the issues herein, and further, even if such facts are true and correct, they refer to claimed adverse effects of the order herein upon plaintiff which result from a proper and lawful exercise by the Commission of its statutory authority, and are therefore incompetent, irrelevant, and immaterial to any issue before this Court.

VII

Further answering the allegations of the complaint, the Commission avers that the order of the Commission entered in No. 30030 and I. & S. Docket No. 5792 on the 4th day of February, 1952, is not unreasonable and was not made and entered by the Commission arbitrarily and under a misconception of the law and is not null and void for the reasons set forth in the complaint, or for any other reason.

The Commission further avers that the report of the Commission so issued on the 4th day of February, 1952, (attached as Exhibit A to complaint) contains the findings and conclusions on which the order is based and that such findings and conclusions were fully supported and justified by the evidence submitted at the hearing in such proceeding and were not made nor entered arbitrarily or unjustly, or contrary to the law and evidence.

The Commission denies that its said report and order are unreasonable, arbitrary, unlawful, or null and void for any of the reasons set forth in said complaint, or for any other reason.

Except as herein expressly admitted, the Commission denies the truth of each and all the allegations contained in the complaint, insofar as they conflict with the allegations herein or with the statements included in the report and order attached as Exhibit A to the complaint.

All of which matters and things the Commission is ready to aver, maintain and prove as this Honorable Court shall direct, and hereby prays that said complaint be dismissed.

[fol. 56] Interstate Commerce Commission, by (S.) Allen Crenshaw, Associate Chief Counsel; (S.) Edward M. Reidy, Chief Counsel, Of Counsel.

[File endorsement omitted.]

[fol. 57] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

MOTION OF RAILROAD COMPANIES FOR LEAVE TO INTERVENE—Filed April 13, 1953

To the Honorable Judges of the United States District Court for the District of Utah.

Come now the railroad companies listed in Appendix A hereto, hereinafter called "applicants", and move the Court for an order permitting them to intervene as defendants in the above styled action and to become parties thereto in order to protect their rights in such proceedings. As grounds therefor, applicants respectfully state:

This action is the outgrowth of a proceeding before the Interstate Commerce Commission entitled *Special Regulations—Eggs,* reported at 284 I.C.C. 377. It involves the validity of an order of that Commission, dated February 4, 1952, and the lawfulness of tariffs published and filed with that Commission on behalf of applicants, among others. The proceeding before the said Commission was instituted on the Commission's own motion; and applicants here were named respondents therein. Each of the applicants listed in Appendix A hereto having been a party in interest to the proceedings before the said Commission, this action involves the interest which each of the said applicants has in the validity and the enforcement of said order issued by the Commission therein and in the aforesaid tariffs. Accordingly applicants are entitled as of right to become parties to this action and to be represented therein by counsel, pursuant to the terms of Section 2323 [fol. 58] of Title 28 U.S.C.A., and Rule 24(a) and (c) of the Federal Rules of Civil Procedure. A pleading setting forth the grounds of intervention of these applicants is attached hereto, pursuant to the requirement of Rule 24(c) of the Rules of Civil Procedure.

Wherefore, your applicants pray that:

(1) an order be entered by this Court granting this motion;

(2) the name of Bryan P. Leverich, whose address is 404 Union Pacific Building, 10 South Main Street, Salt Lake City 1, Utah, be entered as your applicants' attorney of record in this action;

(3) copies of all answers, pleadings, motions, notices, orders and other documents in said action be served on your applicants' attorney of record;

(4) applicants' proposed answer to the complaint herein, of which the original copy is attached hereto, be accepted and filed of record, and

(5) applicants be given an opportunity to be heard on any application to this Court for any decree, injunction, order, determination and finding with respect to the aforesaid report and order of the Commission dated February 4, 1952, and the tariffs published and filed with the Commission in conformity therewith.

(S.) Bryan P. Leverich, Attorney for defendant Railroads; James P. Canny, Charles J. Henry, Alfred S. Knowlton, J. Edgar McDonald, John F. Reilly, William F. Zearfaus, William F. Zinger, Of Counsel.

Dated April 10, 1953.

[File endorsement omitted.]

[fol. 59] APPENDIX A TO MOTION

The Atchison, Topeka and Santa Fe Railway Company, The Beaumont, Sour Lake & Western Railway Company, Guy A. Thompson, Trustee, Chicago and North Western Railway Company, Chicago, Burlington & Quincy Railroad Company, Chicago Great Western Railway Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago North Shore and Milwaukee Railway Company, Chicago, Rock Island and Pacific Railroad Company, Chi-

cago, Saint Paul, Minneapolis and Omaha Railway Company, The Colorado and Southern Railway Company, The Colorado & Wyoming Railway Company, The Denver and Rio Grande Western Railroad Company, Duluth, Missabe and Iron Range Railway Company, Duluth, South Shore and Atlantic Railroad Company, Duluth, Winnipeg and Pacific Railway Company, Fort Worth and Denver Railway Company, Great Northern Railway Company, Green Bay and Western Railroad Company, Gulf, Colorado and Santa Fe Railway Company, International-Great Northern Railroad Company, Guy A. Thompson, Trustee, The Kansas City Southern Railway Company, Kansas, Oklahoma & Gulf Railway Company, Lake Superior & Ishpeming Railroad Company, Midland Valley Railroad Company, The Minneapolis & St. Louis Railway Company, Minneapolis, St. Paul & Sault Ste Marie Railroad Company, Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas, Missouri Pacific Railroad Company, Guy A. Thompson, Trustee, New Orleans, Texas & Mexico Railway Company, Guy A. Thompson, Trustee, Northern Pacific Railway Company, Northwestern Pacific Railroad Company, Oklahoma City-Ada-Atoka Railway Company, Panhandle and Santa Fe Railway Company, The St. Louis, Brownsville and Mexico Railway Company, Guy A. Thompson, Trustee, St. Louis-San Francisco Railway Company, St. Louis, San Francisco and Texas Railway Company, St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, Sacramento Northern Railway, San Antonio, Uvalde & Gulf Railroad Company, Guy A. Thompson, Trustee, Southern Pacific Company, Spokane International Railroad Company, Spokane, Portland and Seattle Railway Company, Texas and New Orleans Railroad Company, Texas & Northern Railway Company, The Texas and Pacific Railway Company, The Texas Mexican Railway Company, Toledo, Peoria & Western Railroad, Union Pacific Railroad Company, Utah Railway Company, The Western Pacific Railroad Company.

The Alabama Great Southern Railroad Company, Alabama, Tennessee and Northern Railroad Company, Apalichicola Northern Railroad Company, Atlanta & Saint Andrews Bay Railway Company, Atlanta and West Point Rail

Road Company, Atlantic Coast Line Railroad Company, Birmingham Southern Railroad Company, Carolina and Northwestern Railway Company, Central of Georgia Railway Company, Charleston & Western Carolina Railway [fol. 60] Company, Chesapeake Western Railway, The Cincinnati, New Orleans and Texas Pacific Railway Company, Columbia, Newberry and Laurens Railroad Company, Columbia and Greenville Railway Company, Durham and Southern Railway Company, Florida East Coast Railway, Scott M. Loftin and John W. Martin, Trustees, Georgia & Florida Railroad, Alfred W. Jones, Receiver, The Georgia Northern Railway Company, Georgia Southern and Florida Railway Company, Gulf, Mobile and Ohio Railroad Company, Interstate Railroad Company, Louisiana & Arkansas Railway Company, Louisville and Nashville Railroad Company, Macon, Dublin & Savannah Railroad Company, New Orleans and Northeastern Railroad Company, Norfolk Southern Railway Company, Savannah & Atlanta Railway Company, Seaboard Air Line Railroad Company, Southern Railway Company, Tavares and Gulf Railroad Company, Tennessee, Alabama & Georgia Railway Company, Tennessee Central Railway Company, The Western Railway of Alabama, Winston-Salem Southbound Railway Company.

The Akron, Canton & Youngstown Railroad Company, The Ann Arbor Railroad Company, The Baltimore and Ohio Railroad Company, Bangor and Aroostook Railroad Company, Barre and Chelsea Railroad Company, Bessemer and Lake Erie Railroad Company, Boston and Maine Railroad, Canadian Pacific Railway Company, The Central Railroad Company of New Jersey, Central Vermont Railway, Inc., The Chesapeake and Ohio Railway Company, Chicago & Eastern Illinois Railroad Company, Chicago & Illinois Midland Railway Company, Chicago, Indianapolis and Louisville Railway Company, Chicago South Shore and South Bend Railroad, The Delaware and Hudson Railroad Corporation, The Delaware, Lackawanna and Western Railroad Company, Detroit and Mackinac Railway Company, The Detroit and Toledo Shore Line Railroad Company, Detroit, Toledo and Ironton Railroad Company, Elgin, Joliet and Eastern Railway Company, Erie Railroad Company, Illinois Central Railroad Company, Illinois Terminal

Railroad Company, Lehigh and New England Railroad Company, Lehigh Valley Railroad Company, Litchfield and Madison Railway Company, The Long Island Rail Road Company, Wm. Wyer, Trustee, Maine Central Railroad Company, Manistee and Northeastern Railway Company, Missouri-Illinois Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The New York, New Haven and Hartford Railroad Company, Norfolk and Western Railway Company, The Pennsylvania Railroad Company, The Pittsburgh and Lake Erie Railroad Company, The Pittsburgh & West Virginia Railway Company, Reading Com-
[fol. 61] pany, Rutland Railway Corporation, St. Johnsbury & Lamoille County Railroad, Toledo, Peoria & Western Railroad Company, The Virginian Railway Company, Wabash Railroad Company, Western Maryland Railway Company.

[fol. 62] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ORDER ALLOWING INTERVENTION OF RAILROAD COMPANIES—April 13, 1953

This cause coming on to be heard on the motion of the railroad companies listed in the Appendix accompanying the motion for leave to intervene as parties defendant, and the court having considered said motion and the pleading in intervention tendered therewith and being duly advised in the premises, and it appearing to the court that the said applicants should be permitted to intervene as prayed,

It is ordered, that the applicants named above are granted leave to intervene and are hereby made parties defendant to this cause with the right to file pleadings and be otherwise represented herein by counsel in the same manner and with like effect as if named as original parties to this action.

tion including the transportation of shell eggs, and of orders of the Interstate Commerce Commission affecting the schedules providing special regulations governing the transportation of shell eggs by railroad, and the handling of damage claims thereon.

2. The Interstate Commerce Commission, by order dated July 23, 1948, on its own motion instituted an investigation into and concerning the reasonableness and otherwise lawfulness of the special regulations covering descriptions, marks, inspection and delivery, and the handling of claims thereunder in connection with the transportation, in interstate or foreign commerce, of shell eggs from, to, and between points in the United States, with a view to making findings and prescribing reasonable rules, regulations, and practices relative to such transportation. Applicants were made respondents to the proceeding before the Commission.

3. During the course of the Commission's hearings of the aforementioned investigation, applicants proposed to [fol. 65] change the special regulations then under investigation in the manner set forth in Appendix C to Exhibit A of the original complaint in the present proceeding. The Interstate Commerce Commission suspended the proposed schedules and made them the subject of its Investigation and Suspension Docket No. 5792, which was then heard with and decided on a joint record with Docket No. 30030. The decision of that Commission is reported in *Special Regulations—Eggs*, 284 I.C.C. 377. The pertinent provisions of the regulations are epitomized at page 382 of the Commission's report as follows:

> "The proposed regulations further provide that on eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where physical damage to the eggs at destination does not exceed 4 percent of the contents of the packages containing damaged eggs; and that on eggs placed in packages at points other than the rail point of origin no claim shall be allowed where the damage at destination does not exceed 6 percent. Where the damage on such respective shipments exceeds 4 and 6 percent, claims

shall be allowed for all damage in excess of these amounts if investigation develops carrier liability. The proposed regulations also provide that where bona fide certificates of Federal and State egg inspection agencies showing the physical damage to eggs, determined at the rail point of origin of the shipment immediately prior to tender thereof for rail transportation, indicate the actual shell damage to eggs placed in packages at the rail point of origin to be other than 3 percent, and to eggs not placed in packages at the rail point of origin to be other than 5 percent, the percentages of actual damages as shown on such certificates, plus 1 percent, shall be used in lieu of the 4 and 6 percent, respectively, heretofore indicated."

The evidence before the Commission showed that there is a substantial amount of shell damage in a consignment of eggs prior to the time that it is offered to the railroads for transportation due to the inherent nature of shell eggs, and that for the same reason there is a substantial amount of inevitable shell damage in the transportation of a consignment of eggs even though the utmost care is exercised in its movement. The purpose of the regulation is to assure the railroads relief from paying claims for breakage for which they are not responsible. This is epitomized by the Commission at page 401 of its decision as follows:

"The * * * proposed regulations are not limitations of the carriers' liability in respect of damage to property transported by them. They constitute merely tariff rules and practices designed to relieve the carriers from paying claims for damages which are not attributable to their negligence but which result from the inherent nature of the commodity transported."

[fol. 66] The Commission held hearings at Chicago, Ill., Brooklyn, N. Y., Washington, D. C., and Los Angeles, Calif. The proceedings were carefully briefed and were made the subject of a proposed report by two Examiners

of the Interstate Commerce Commission. Exceptions to the proposed report were filed by the parties and the issues were then orally argued before the whole Commission. On February 4, 1952 the Commission handed down its report and order. It approved the suspended schedules subject to the following qualification:

> "We further find that the proposed tolerance of 4 percent on eggs packed at the rail point of origin, and 6 percent on eggs packed at points other than the rail point of origin have not been justified, but that tolerances of 3 and 5 percent, respectively, would be reasonable."

By order of February 4, 1952, the Interstate Commerce Commission ordered the railroads to cancel the schedules suspended in I. & S. Docket No. 5792 on or before March 18, 1952. On the same date it ordered that its order of July 23, 1948, in Docket No. 30030 instituting the investigation be vacated and set aside as of March 18, 1952, and that that proceeding be discontinued. Petitions for reopening, reconsideration and reargument were filed with the Commission on behalf of the Secretary of Agriculture and others. In order to give the Commission opportunity to consider these petitions, the Commission postponed the effective date of its order of February 4, 1952, in Docket No. 30030 on two occasions. On May 19, 1952, the Commission denied the petitions of the Secretary of Agriculture and the others.

After the cancellation on March 18, 1952, of the schedules suspended in I. & S. Docket No. 5792, the railroads published Supplement 10 to Consolidated Freight Classification No. 20, effective April 18, 1952, setting forth the regulations found reasonable by the Commission in the dockets just mentioned. The effective date of the aforesaid schedules was postponed in Supplement 12 to May 2, 1952. Certain of the shippers asked the Commission to suspend the regulations as set forth in Supplement 10, but the Commission refused to do so. The regulations are now in effect in tariffs lawfully published and on file with the Interstate Commerce Commission.

4. Applicants specifically set forth their defenses as follows:

[fol. 67] (a) that railroads, as common carriers, are not liable for failure to transport safely goods entrusted to their care when the loss or damage is due to the inherent nature of the goods;

(b) that the tolerances approved by the Interstate Commerce Commission in its decision in Docket No. 30030, and in the tariffs published in conformity therewith, hereinafter referred to as the "tolerances" represent the normal expectancy of shell damage to eggs before and during railroad transportation due solely to the inherent nature of the eggs;

(c) that the tolerances relieve the railroads from paying claims for eggs which are damaged at the time the eggs are received by the railroads for transportation;

(d) that the tolerances relieve the railroads from paying claims for eggs which are damaged during rail transportation due to the inherent nature of the eggs;

(e) that the tolerances do not relieve the railroads from paying claims for damages for which they are responsible, but do relieve the railroads from paying claims for damages which are not caused by them;

(f) that the regulations provided in the tariffs published in conformity with the report and order of the Commission in its decision *Special Regulations—Eggs, supra*, afford shippers the right alternatively to have the exact amount of point of origin damage determined and applied so that shippers always have the right to elect whether their claims will be reduced by the exact amount of shell damage existing at the time shell eggs are offered for rail transportation or by the normal expectancy of shell damage fixed by the tolerances approved by the Commission in its aforementioned decision;

(g) that the tariffs do not purport to free the railroads from liability for necessary labor and material expenses incurred in reconditioning packages damaged by them, but specifically provide that in case of carrier liability actual and necessary charges incurred for labor and material in reconditioning each package in which verified damage exceeds the tolerances found reasonable by the

Commission in *Special Regulations—Eggs, supra*, or exceeds the damage as otherwise determined in the manner [fol. 68] set forth in the paragraph immediately preceding, whichever is applicable, shall be borne by the carrier;

(h) that the tolerances are not against damage caused by the railroads, but simply reflect average shell damage to eggs existing at the time they are offered for transportation and for average shell damage to eggs during transportation due to the inherent nature of the eggs; and therefore do not violate the provisions of Section 20 (11) of the Interstate Commerce Act prohibiting limitations of liability;

(i) that the specific provision of the Interstate Commerce Act involved in Section 1(6) thereof, which makes it the duty of railroads to establish, observe and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed;

(j) that the Interstate Commerce Commission, by virtue of Section 13(2) of the Interstate Commerce Act, has jurisdiction over practices and tariff rules of the railroads such as the regulations and the tolerances here under consideration;

(k) that in the exercise of the aforementioned jurisdiction the Commission has determined the fair, just and reasonable practices and rules of the railroads by which are established through the medium of tariff rules and regulations a means to determine the amount of damage existing at the time a shipment of eggs is received by a railroad, and the amount of damage resulting during the transportation solely because of the inherent nature of the eggs;

(l) that the Commission's authorization in *Special Regulations—Eggs*, with respect to the regulations and tolerances and the tariffs published in conformity therewith, insure uniformity in the handling of claims;

(m) that the Commission's decision in *Special Regulations—Eggs* is supported by substantial evidence;

(n) that the Commission, in *Special Regulations—Eggs*, has made the necessary findings of the basic facts upon which its conclusion is predicated;

[fol. 69] (o) that the Commission's decision in *Special Regulations—Eggs*, and the tariffs publishing the regulations and tolerances in conformity therewith, are not in violation of the law in any respect whatsoever.

(S.) Bryan P. Leverich, Attorney for defendant Railroads; James P. Canny, Charles J. Henry, Alfred S. Knowlton, J. Edgar McDonald, John F. Reilly, William F. Zearfaus, William F. Zinger, of Counsel.

Dated April 10, 1953.

[File endorsement omitted:]

[fol. 70] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ANSWER OF INTERVENING RAILROADS—Filed April 13, 1953

The intervening railroad defendants, named in Appendix "A" hereto (hereinafter sometimes referred to as the "defendant railroads"), answer the complaint of the plaintiff herein as follows:

First: Deny that the defendant railroads have any knowledge or information as to any of the allegations contained in paragraph designated "1" of the complaint sufficient to form a belief as to the truth thereof, except that they admit the truth of the allegations commencing after the semi-colon with the word "that" and ending with the date "February 4, 1952."

Second: Admit the allegations in paragraph designated "2" of the complaint commencing with the first word "This" and ending with the word "point", and also admit the allegations commencing with the words "This action, therefore," and ending with the words "Section 1009 of Title 5 United States Code Annotated", and deny every

other allegation in paragraph designated "2" of the complaint not hereinbefore expressly admitted.

Third: Admit the allegations contained in paragraph designated "3" of the complaint.

Fourth: Deny the allegations in paragraph designated "4" of the complaint in so far as they are contrary to the facts stated in the Report of the Interstate Commerce Commission dated February 4, 1952, in Docket No. 30030, or as contained in the record of the Commission in that case, except that they admit the allegations contained in the last eight lines of paragraph "4" of the complaint.

[fol. 71] Fifth: Admit the allegations contained in paragraphs designated "5", "6", "7", "8" and "9" of the complaint only in so far as such allegations are not contrary to the facts shown by the record before the Commission and the Commission's Report of February 4, 1952.

Sixth: Deny each and every allegation contained in paragraphs designated "9", "10", "11", "12", "13" and "14" of the complaint.

Seventh: Deny each and every allegation contained in paragraph designated "15" of the complaint, except that the defendant railroads admit they are complying with the rules and regulations contained in lawful tariffs on file with the Interstate Commerce Commission applicable to the transportation of shell eggs.

Eighth: Admit the allegations contained in the first sentence of paragraph designated "16" of the complaint, and deny every allegation in said paragraph not hereinbefore expressly admitted.

Ninth: Further answering the allegations of the complaint, the defendant railroads state that the Order of the Commission entered in Docket No. 30030 and I. & S. Docket No. 5792 on the 4th day of February, 1952, is not unreasonable and was not made and entered by the Commission arbitrarily and under a misconception of the law, and is not null and void for any of the reasons set forth in the complaint, or for any other reason; that the Report of the Commission issued on the 4th day of February, 1952, which is attached as Exhibit "A" to the complaint, contains substantial findings on which the conclusions made by the Commission are based and that such findings

and conclusions were fully supported and justified by the evidence submitted at the hearing in such proceeding and were not made or entered arbitrarily or unjustly or contrary to the law and evidence; that said Report and Order are not unreasonable, arbitrary, unlawful or null and void for any of the reasons set forth in the complaint, or for any other reason; deny that the provisions of said tariffs in any way violate Section 20(11) of the Interstate Commerce Act since there is no limitation of liability contained in the tariffs. Defendant railroads aver that the provisions of said tariffs are just and reasonable practices affecting the classification of eggs established by them in compliance with their duty imposed by Section I (6) [fols. 72-78] of the Interstate Commerce Act. The defendant railroads further aver that the Interstate Commerce Commission, of its own motion, investigated the practices of the defendant railroads in regard to the handling and transportation of shell eggs and the claims arising therefrom pursuant to Section 13 (2) of the Interstate Commerce Act and found that the provisions of the classification were not limitations of liability, but are reasonable practices to relieve the carriers from paying claims for damage to shell eggs which result from the inherent nature of shell eggs and without any negligence on the part of the defendant railroads. The defendant railroads further aver that the specific provision of the Interstate Commerce Act applicable in Section I (6), and not Section 20 (11), for there is no limitation of liability.

Wherefore, the defendant railroads named in Appendix "A" hereto, respectfully request that the complaint be dismissed.

(S.) Bryan P. Leverich, Attorney for Defendant Railroads; James P. Canny, Charles J. Henry, Alfred S. Knowlton, J. Edgar McDonald, John F. Reilly, William F. Zearfaus, William F. Zinger, of Counsel.

Dated April 13, 1953.

[File endorsement omitted.]

[fol. 78] IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Civil Action No. C 8-53

UTAH POULTRY & FARMERS COOPERATIVE, a Utah Corporation, Plaintiff,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, Defendants

Irwin Clawson, Esq., Salt Lake City, Utah, for Plaintiff.

Paul E. Blanchard, Esq., Armour & Company, Chicago 9, Ill., Intervenor.

John P. Staley, Esq., Swift & Company, Chicago 9, Ill., Intervenor.

Walter D. Matson, Esq., Office of the Solicitor, Department of Agriculture, Washington 25, D. C., Intervenor.

Charles S. Sullivan, Esq., Special Assistant to Attorney General, Washington 25, D. C., for Defendant U.S.A.

H. D. Lowry, Esq., Assistant U. S. Attorney, Salt Lake City, Utah, for Defendant U.S.A.

Bryan P. Leverich, Esq., Salt Lake City, Utah, for railroads—Intervenor.

William F. Zearfaus, Esq., 1740 Suburban Sta. Bldg., Philadelphia 4, Pa., Intervening railroads.

OPINION—March 10, 1954

Before Pickett, United States Circuit Judge, Ritter and Knous, United States District Judges.

RITTER, *District Judge.*

[fol. 79] [Title omitted]

The Complaint seeks to have the Interstate Commerce Commission order of February 4, 1952,[1] approving special regulations of rail carriers covering claims of damage to shell eggs, set aside, annulled and enjoined.

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[1] No. 30030, Special Regulations—Eggs, Vol. 284 I.C.C. page 377.

[2] 28 U.S.C. 1336, 2284, and Chapter 157.

Jurisdiction[2] of this court to review the order, and venue of the parties, are admitted except as to the prayer for a mandatory injunction against the Commission and its eleven members, whose official residence is the District of Columbia and who are not within the venue of this court.

It is admitted that this court has jurisdiction to hear and decide as to the lawfulness of the Commission action and its order. The questions of lawfulness here involved relate only to the Commission orders and not to the tariff filed after the orders became effective, which would be a different proceeding before the Commission and the court.[3]

[fol. 80] The plaintiff, Utah Poultry and Farmers Cooperative, is a farmers cooperative marketing association incorporated under the laws of Utah[4] engaged among other things in marketing eggs. Armour and Company, Swift and Company, and the Secretary of Agriculture of the United States have intervened as plaintiffs herein and join in the attack upon the Commission order. The statutory defendant, the United States of America, claims in its answer that the Secretary of the Army represented the United States as a shipper in the proceedings before the Commission, and, in furtherance of its assault upon the Commission order, admitted all of the allegations of the complaint. At the hearing the Justice Department lawyer stated that the United States "confessed error".

The claims of departments of government other than the Interstate Commerce Commission are entitled to no more weight and consideration than are the same claims in the

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[3] The tariff was filed August 7, 1952, after the entry of the order herein of February 4, 1952, and after its effective date of July 1, 1952. It was filed after the last petition for reconsideration on April 20, 1952, and after final termination of the proceedings before the Commission, and therefore, is not a part of the Commission record herein. If considered by any court it would be by a regularly constituted district court in an action against a carrier, based upon that tariff. Consideration of that tariff in this action would be beyond the jurisdiction of this statutory three judge court which is limited to enforce, enjoin, set aside, annul, or suspend "any order of the Interstate Commerce Commission".

[4] Ch. 1, Title 3, Utah Code Ann. 1953.

complaint of the private parties. The Attorney General does not have authority to "confess error" and thereby to dispose of this action.[5]

The Interstate Commerce Commission is vested with the only legal authority to administer the Interstate Commerce Act. It has exclusive authority in this field. Neither the Department of Agriculture, Department of the Army, or the Department of Justice (or all of them) has any authority superior to the Commission to decide for the government the questions raised by this action.[6]

[fol. 81] The proceeding before the Interstate Commerce Commission was instituted on the Commission's own motion, by its order of July 23, 1948. One hundred and thirty one railroad companies, parties to the tariff schedules, were named respondents therein. And, all of those railroad companies have intervened as parties defendant in the suit in this court, and now defend the Commission order.

Hearings were held by the Commission at Washington, D. C., September 23, 1948; Chicago, Ill., July 26, 27, 1949;

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[5] 28 U.S.C. 2323, provides: "The Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party." and; it further provides: "The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or nonaction of the Attorney General therein."

[6] 49 U.S.C. 12(1) provides: "And the Commission is authorized and required to execute and enforce the provisions of this chapter; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof."

Brooklyn, N. Y., December 15, 1949; Washington, D. C., February 8, 1950; Los Angeles, Calif., August 1, 1950, and Chicago, Ill., September 7, 1950, at which counsel for respondent railroads, Department of Agriculture, Defense Department, various producer organizations, and shippers, appeared and submitted testimony of witnesses, and exhibits. The record compiled at these hearings consists of 1,067 pages of testimony and 60 exhibits, many of elaborate statistical data, tables, and charts. Following the hearing briefs were submitted by counsel for respondent railroads, Secretary of Agriculture, Secretary of the Army, National Poultry, Butter and Egg Association, New York Mercantile Exchange, Fairmount Foods Co., Zenith Godley Co., and four packing house companies.

An Examiner's proposed report was filed and served on all parties on April 25, 1951, recommending, for reasons therein stated, that the Commission find that the then 5 percent tolerance on eggs, other than those rehandled and repacked at the rail point of origin, was not shown to be unreasonable or otherwise unlawful, and that the proposed tolerance of 4 percent on eggs packed at the rail point of origin and 6 percent on those packed at other than rail points of origin, had not been justified, but that tolerances of 3 and 5 percent, respectively, would be reasonable. Exceptions were filed to the examiner's proposed report. Oral arguments by counsel were heard by the Commission on October 26, 1951.

Thereafter the report and orders of February 4, 1952, here involved, were entered by the Commission. Petitions for reopening, reconsideration, and reargument were filed and were denied by the Commission.

[fol. 82] The report of February 4, 1952, discontinued the original proceeding and required the suspended schedules to be cancelled without prejudice to the filing of new schedules in conformity with the findings therein, viz., that tolerances of 3 percent on eggs packed at the rail point of origin, and 5 percent on those packed at points other than rail points of origin, would be reasonable. Railroad respondents filed schedules, as permitted by the Commission report, effective on and since August 7, 1952.

The complaint alleges that respondents' schedules, which

became effective August 7, 1952, purport to free railroads from all liability for loss of eleven eggs per case on shipments repacked at origin, or 18 per case on shipments not repacked at origin, or 4 per case on government inspected cases, and therefore violate the provisions of Section 20(11) of the Act.[7] The complaint, further alleges that "in approving and accepting the tariff", the Commission failed or refused to enforce and observe provisions of the Act. And the complaint alleges that the decision of the Commission is unlawful, on the grounds (a) that findings of fact are unsupported by substantial evidence, and contrary to record evidence, (b) that conclusions of law are not supported by findings of fact, and (c) that conclusions are based upon fact findings wholly irrelevant and immaterial to any issue, and that the decision lends color of authority for legality of tariff provisions in effect, which are unlawful and in violation of Section 20(11) of the Interstate Commerce Act.

Intervening complaint of the Secretary of Agriculture, claims as the only Commission error, that the carrier damage tolerance rules, approved by the Commission, are attempts to limit common carrier liability and, as such, are void as a matter of law under Section 20(11) of the Interstate Commerce Act, that there is no factual basis of record to support the tolerance percent approved, and that, if the damage tolerance rules are valid, approval thereof for nationwide application is unsupported by substantial evidence or adequate findings.

[fol. 83] *The Problem Before the Commission*

The Commission was confronted here with complex and difficult questions, of great importance to railroad transportation over the nation. Claims by shippers against carriers for damage to shell eggs had increased greatly. Claims throughout the country increased from about $110,000.00 in 1941 to an all time peak of $2,338,462.00 in 1947. Claim payments in the latter year were relatively greater for damage to eggs than to any other commodity. The shell egg carload traffic originated in 1947 was only

[7] 49 U.S.C. 20(11).

0.072 percent of all carload traffic, while the claim payments for damages to eggs was 1.91 percent of all claim payments.[8]

The claim payments on eggs in that portion of the United States north of the Ohio and Potomac rivers between the eastern seaboard and the Mississippi River were 2.32 percent in 1941, 7.02 percent in 1943, 16.16 percent in 1945, and 38.41 percent in 1947 of the aggregate railroad revenue on this traffic. In the latter year the total claim payments in this territory amounted to $1,444,453.00.[9]

The following table compiled from Exhibit No. 6 of the record before the Commission sets out the loss and damage per car and per $100 gross revenue on shipments of shell eggs, as compared with other commodities throughout the entire country in 1947:

Commodity	*Loss and damage*	
	Per car	*Per $100 Revenue*
Shell eggs	$83.72	$21.20
Melons	52.80	15.11
Sewer pipe, et cetera	19.57	13.16
Crockery and earthenware	29.20	9.10
Furniture (new)	10.23	4.38
Grain	3.45	1.42
Meats, fresh and cured	3.41	1.13
Plumbers' goods	14.06	4.35

A study made by the railroads and introduced in evidence by the Commission shows that claims were filed on 58.6 percent of all carloads of shell eggs delivered in New York, Philadelphia, Baltimore and Boston during 1947. The study also shows that the percentage that such claims were of the total revenue received on the shell egg [fol. 84] traffic to those cities during the year mentioned is as follows:

New York	50.5
Philadelphia	11.7
Baltimore	15.8
Boston	12.2
Total	41.7

[8] 284 I.C.C. at page 399.
[9] Id.

At the conclusion of the first hearing at Chicago, after listening to the testimony concerning the extraordinary damage claim payments on shipments of shell eggs, Interstate Commerce Commissioner Mitchell, who was hearing the case, said at page 364 of the record:

> "We will proceed to New York. We have but one desire in mind, of course, and that is to see if we can't remedy a condition which seems to us should be remedied. That is our sole purpose in this investigation, to help the shippers and to see that the railroads receive fair compensation for hauling eggs."

Where such an immense volume of traffic, running into thousands of cars and millions of cases of eggs, (284 I.C.C. 377, 386), and such tremendous freight charges and damage claim payments, running into millions of dollars, (284 I.C.C. 377, 387), are involved, the economic stability of carriers and the maintenance of an adequate national system of railroads, were substantially affected. It is the exclusive responsibility of the Commission, under the National Transportation Policy[10] to foster sound economic conditions in transportation and among carriers "to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of commerce of the United States, of the Postal Service, and of the national defense." Many interests are here concerned including farmers, consumers, the national defense. They and all other elements in our economy are deeply interested in the maintenance of an adequate national transportation system.

Anything endangering the efficient operation of railroads inevitable will be injurious to us all.

[fol. 85] *The Alternative Remedies Are Unpromising*

The Commission sought a remedy. The problem of claims against railroads for damage to egg shipments had been before the railroads and the Commission for many years and never satisfactorily solved. It is extremely difficult of

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[10] 49 U.S.C. preceding secs. 1, 301, 901, and 1001.

solution. It constitutes a part of the whole problem of the rate structure, which courts many times have held requires the experience and judgment of the Commission.

The Commission could not expect the railroads to continue to take these losses. That was uneconomic to the point of being injurious to the national railroad transportation system and to the public interest. That, also, in effect, was a means of obtaining involuntary rebates contrary to one of the most fundamental underlying principles of the Interstate Commerce Act, i.e., to insure uniformity and to avoid unjust discrimination.[11]

The Supreme Court of the United States, in *Lowden* v. *Simonds etc. Grain Co.*,[11-a] said:

> "Under par. 6 of the Interstate Commerce Act the carrier cannot deviate from the rate specified in the tariff for any service in connection with the transportation of property.* That section forbids the carrier from giving a voluntary rebate in any shape or form. This court has had occasion recently to sustain action of the Commission aimed at carriers' practices resulting in collection of less than the tariff rate.** It is equally important to aid the efforts of a carrier in collecting published charges in full.*** Involuntary rebates from tariff rates should be viewed with the same disapproval as voluntary rebates."

Rate increases were not the remedy. That would have imposed a greater cost upon shippers throughout the nation than the present regulation. That would have been more unjust for it would penalize some shippers for the benefit of others. That would not have benefited the shippers of eggs.

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[11] New Haven R.R. v. I.C.C., 200 U.S. 361, at page 391.

[11-a] 306 U.S. 516, at top of page 521, (1939).

*Act of February 4, 1887, 24 Stat. 379, 381, as amended, 49 U.S.C., par. 6 (7).

**Baltimore & Ohio R. Co. v. United States, 305 U.S. 507.

***Cf. Pittsburgh, C., C. & St. L. Ry. Co. v. Fink, 250 U.S. 577; New York Central & Hudson River R. Co. v. York & Whitney Co., 256 U.S. 406.

That would tend to cause the railroads to lose all of the business.

[fol. 86] The limitation of the regulation to the four eastern cities where most of the damage claims to eggs arise, we are informed was tried and failed.

It is not unjust to apply the regulation nationwide. A shipper whose eggs suffer no damage is not hurt. The tolerance applies only if there is damage. If throughout the nation relatively small claims of damage were made by some shippers it would follow that there would be comparatively small or insignificant reductions under the regulation. And, it is a reasonable assumption from the Commission's exhaustive factual studies that generally some amount of damage was in the crates at the time they were delivered to the carrier.

One suggestion is that Congress enact remedial legislation. This would seem to be undesirable and impracticable for a number of reasons. There are important considerations which seem to require the retention of the provisions of Section 20(11) in the Act. No one has suggested that it be repealed in its entirety. The provisions has proved to be a beneficent one. Congress has developed a policy for solving these problems by reliance upon the expertness and experience of the Commission rather than upon the saving clauses enacted by itself to take care of the cases as they arise. History has shown us that it is better to develop a rule by the common law method of deciding the cases as they arise and thus carving the principle out by the light of experience.[12] Particularly is this true where as here the matter is one calling for the judgment of an administrative body of experts to pass upon issues of fact. If it is bad policy for the Commission to limit carrier liability *a fortiori* it is bad policy for the legislature to do so. The courts will

[12] The question was put to Lord Nottingham, "where will you stop if you do not stop here?" And his answer was, "I will tell you where I will stop; I will stop wherever any visible inconvenience doth appear." The Duke of Norfolk's Case, Charles Howard v. Duke of Norfolk, Court of Chancery, 1682. 3 Ch. Cas. 1, 26.

draw the line when the suggested horrible, atrocious or monstrous situations shall arise from any claimed abuse of administrative discretion.

The Evidence

What then, in such a situation, is the Interstate Commerce Commission to do?

It instituted an investigation with a view to making findings and prescribing reasonable rules, regulations, and practices relative to the transportation of shell eggs.

That investigation developed that there is a certain minimum amount of damage in every crate of eggs when it is [fol. 87] delivered to the carrier. That damage consists of checked, cracked and broken eggs. That damage also consists of unavoidable further loss arising from those checked, cracked and broken eggs, and from inherent defects in the eggs at the time of delivery to the carrier.

The brief filed herein by the intervening railroads summarizes the evidence. It is noteworthy that much of it came from witnesses from the United States Department of Agriculture, an intervening plaintiff herein. The brief sets out the evidence as follows:

"The evidence before the Commission proved conclusively that it is humanly impossible to handle shell eggs without some breakage (138, 257, 258, 263)*. Crystal clear statements to this effect came from the witnesses from the United States Department of Agriculture, an intervening plaintiff here.

"Mr. Henry G. F. Hamann, Chief of the Dairy and Poultry Inspection and Grading Division, Production and Marketing Administration, United States Department of Agriculture, was placed upon the stand by Mr. Walter Matson, the attorney for the United States Department of Agriculture, and, at pages 256 and 257 of the record, testified as follows:

"'Commr. Mitchell: Mr. Hamann, I notice in your Exhibit No. 20, as I read this, your department pro-

*The figures in parentheses refer to pages of the transcript of testimony taken before the Interstate Commerce Commission.

vides for tolerance permitted in these grade AA eggs of 7.5, is that right?

"'The Witness: That is correct, sir.

"'Commr. Mitchell: That includes checks?'

"'The Witness: Yes, sir, that includes all tolerances, all tolerance for edible eggs.

"'Commr. Mitchell: And on grade A, you permit 11.7 percent?

"'The Witness: Yes, sir.

"'Commr. Mitchell: So you do recognize that there must be a tolerance in the grading of eggs?

"'The Witness: There is a tolerance in the grading of eggs, sir, because it is not humanly possible to remove from any lot of eggs in the candling or grading process of defective eggs.

"'Commr. Mitchell: Does that include also cracked eggs?

"'The Witness: Yes, sir.'

[fol. 88] "'Commr. Mitchell: You say, then, it isn't humanly possible to eliminate all the cracked eggs that you would find in cases?

"'The Witness: That is correct.

"'Commr. Mitchell: All right.

"'The Witness: The tolerances are set up primarily for the purpose of making allowance for human error.'

"Further on pages 257-268 the following colloquy took place between Mr. Hamann and his counsel:

"'Q. (By Mr. Matson) You say that it is impossible to eliminate every checked and cracked egg from a case in the process of grading and inspection of eggs?

"'A. Yes, sir.'

"And still further at page 263 of the transcript Mr. Hamann testified as follows:

"'Q. You pointed out it was humanly impossible, or at least impractical, to pack a perfect car. You have never seen a perfect car, have you?

"'A. No, sir, I haven't.

"'Q. Then there is a normal expectancy of shell damage in every car that is loaded, is there not?

"'A. Yes, sir.'

"Another witness placed upon the stand by the attorney for the United States Department of Agriculture was Mr. Hermon I. Miller, Chief of Research Division of the Poultry Branch, Production & Marketing Administration, United States Department of Agriculture (283). He made studies with respect to damage to shell eggs at the request of the Interstate Commerce Commission (295). Mr. Miller stated that when eggs from the farm are delivered to the packer 5 percent of them are in a checked condition (shell cracked but membrane unbroken) upon arrival at the packing plant. Of this 4 percent existed at the time the eggs left the farm, and 1 percent more became checked while traveling to the packer's plant (283, 289, 297, 446, 447). In addition to the 5 percent of the eggs which were in a checked condition, 12 percent more also showed shell damage consisting of stains and dirties (296, 297). The witness stated that the eggs are reworked at the packer's plant and that when they left the shipping point the eggs showed 1.9 percent checks and 1.4 percent stains and dirties, a total of 3.3 percent (297). This testimony was given by Mr. Miller at the hearing in [fol. 89] Chicago on July 27, 1949. After further tests he corroborated it at a subsequent hearing which was held at Brooklyn, N. Y., on December 15, 1949, his testimony, which appears at pages 444 and 445 of the record with respect to this point, being as follows:

"'A. At the Chicago hearing you presented exhibits Nos. 22 and 23 and you indicated at page 294 of the record that, "We have some other material for 1948 that we haven't got summarized yet that we will throw into this when we get it completed".

"'Have you made some subsequent checks, since the Chicago hearing?

"'A. Yes, Mr. Matson. That was with regard to the amount or the type of egg that was going into cases in mid-western shipping points and the type coming out at destination, and we have examined the

complete records and our testimony will stand as presented in Chicago.

"'Q. As I recall that testimony, at pages 269 to 298 of the transcript, you found that there were packed into the cases at origins 1.9 per cent checks?

"'A. That is right.

"'Q. And 1.4 per cent stains and dirties. Do your subsequent tests that you have run on this material and other material bear you out in those figures?

"'A. They do.'

"The study in which this witness of the Department of Agriculture expressed confidence was described by him at page 286 of the record as follows:

"'The third source of material consists of data on 115 cars secured by our own staff members in 1948 and 1949. In these records we made careful inspections of eggs at points of origin as they were to be loaded into railway cars, marked the sample cases inspected at this point, and re-inspected these same cases and the same eggs at destination. This exhibit should typify the average quality and condition of eggs that are packed in railroad cars for shipment from midwestern points.'

"The result of the study described in the above quotation is set forth at page 3 of Exhibit No. 22, and shows the shell damage prior to rail shipment as follows:

Stains and dirties	1.4
Checks	1.9
Loss	0.1
Total	3.4

"The reason for the confidence which the Department of Agriculture representative had in the above figures is stated by him at pages 287 and 288 of the record, as follows:

[fol. 90] "'Now, I have more faith in those figures than I would have otherwise because if you look in the middle page between those two tables you find

the report on the 737 cars selected at random from the inspection and grading reports, and I think you will agree that to a considerable extent the total or average column for origin and grading reported on this page agrees with the origin grading for the 115 cars. That gives me confidence to a certain extent that the figures on the 115 cars are rather representative.'

"The study with respect to the 737 cars, to which the Department of Agriculture witness referred covers eggs from all parts of the country (296). It appears at page 2 of Exhibit No. 22 and contains the following breakdown:

Stains and dirties	1.8
Checks	1.9
Loss	0.2
	3.9

"Mr. Hamann, the aforementioned Chief of the Dairy and Poultry Inspection and Grading Division, Production and Marketing Administration, of the United States Department of Agriculture, stated that approximately 10 percent of the total volume of commercial eggs produced throughout the nation are graded by the Department (238, 240), and that the certificates issued by the Department at the time of the grading show that there is a normal expectancy of shell damage at origin (263).

"An examination was made by the railroads of 1,002 origin inspection certificates of the Department of Agriculture which revealed that 18,437 cases of eggs were included in the 1,002 cars examined at shipping point with the following results:

> 3.04 percent of the natural eggs (eggs before oil dipping) were found to be checked and/or stained.
>
> 3.22 percent of the processed eggs were found to be checked and/or stained (105).

"The railroads' study of the Department of Agriculture certificates which developed that 3.22 percent of eggs shipped have shell damage at origin is a remarkable sub-

stantiation of the study made by the Department of Agriculture in response to the request by the Commission.

"The railroads also submitted the results of studies of inspections made by them at rail shipping points (105). [fol. 91] These studies showed that there is shell damage of one kind or other in every car regardless of whether or not the eggs had just been rehandled and repacked or had been hauled over the highways various distances before loading into the rail freight car. The result of this research is summed up as follows:

From	*Year*	*No. of cars*	*Percentage Damage*
Indiana	1947	74	2.2
"	1948	30	3.2
"	12/4/48 to 2/19/49	22	2.8
Iowa	1947		2.57
"	1948		2.46
Minnesota	1947		1.81
"	1948		3.84

"The results of another railroad study made at shipping point were given in Exhibit No. 15 and at page 196 of the record as follows:

> "'We adopted a program of taking 15 cases and inspecting 100 eggs to determine how many eggs were checked, broken, stained and dirty. The statement shows that we made inspection on 60 cars and we developed through that process that we used 2,256 checks, 98 broken, or a percentage of 2.61.'

"Shipping point studies made by railroad representatives indicate that shell damage before rail transportation is chargeable to the following factors in the order of their importance, not one of which is attributable to the railroads: *First*, the inherently fragile nature of eggs. It is generally conceded by all parties acquainted with the commercial handling of eggs that a certain amount of shell damage is inescapable. This normal expectancy of damage starts at the nest and, depending upon the strength of the individual shell, continues progressively until the egg is used by the consumer.

Second, the handling of the eggs in the candling and repacking operations. Checks (cracked eggs with unbroken membrane) develope in any oil dip processing of the eggs, and eggs are broken when the egg case is lidded.

Third, the handling by the shippers of the packed egg cases to and into freight car. Very often there is no supervision of the handling of the packed cases in the car. Sometimes unskilled or itinerant labor, with apparently no previous training, is used by the shippers to load the cars, and with no supervision on the part of the owner of the eggs in promoting careful and proper loading (106, 107).

[fol. 92] "The condition of a damaged egg never gets better, but always gets worse with handling. Not only is there a worsening during transportation of the condition of the eggs which were in a damaged condition at the time they were received by the railroads, but those eggs also cause damage to others which had been sound. (197).

At page 3 of the Department of Agriculture's Exhibit No. 22 is set forth the results of studies made by it with respect to 115 carloads of eggs delivered on all parts of the east coast, the Gulfport cities, and the west coast (287, 450). Included among them were 12 cars which went to New York City (450). One study was of the condition of the 115 carloads at point of origin and the other study was of the condition of the same 115 carloads at destination after they had received rail transportation. The difference between the number of stains and dirties and checks at destination, and the number of stains and dirties and checks at origin, was found to be 1.5 percent. The witness said that this figure was supported by 8,000 additional cars, using the following language at page 449:

> "'A. Fifteen cases to the car, a hundred eggs in each case, 115 cars supported by approximately 8,000 additional cars.
>
> "'Q. These are all rail tests?
>
> "'A. All rail tests.'"

Experience with Tolerance Rules

Tolerance rules in connection with damage claims arising out of the transportation of shell eggs have been in effect for 37 years and with the approval of the Interstate Commerce Commission for 34 years.

Settled administrative construction, long standing approval by the Interstate Commerce Commission of tolerance rules, and compliance in practice, in connection with damage claims incidental to the transportation of shell eggs are entitled to great weight.

In *U.S.* v. *Chicago North Shore R. Co.*,[12-a] the Supreme Court of the United States said:

> "It would be difficult indeed to conceive a clearer case of uniform administrative construction of par. 20a as applied to this company. Conceding that the proper classification of the railway is not free from difficulty, all doubt is removed by the application of the rule that settled administrative construction is en- [fol. 93] titled to great weight and should not be overturned except for cogent reasons. *New York, N. H. & H. R. Co.* v. *Interstate Commerce Commn.*, 200 U. S. 361, 401; *Logan* v. *Davis*, 233 U. S. 613, 627; *Brewster* v. *Gage*, 280 U. S. 327, 336; *Fawcus Machine Co.* v. *United States*, 282 U. S. 375, 378; *Interstate Commerce Commn.* v. *New York, N. H. & H. R. Co.*, 287 U. S. 178.
>
> "The primary responsibility rested upon the Commission to determine whether under the circumstances the railroad was required to procure leave under par. 20a for the issuance of securities. Evidently entertaining serious doubts on this question it has for more than a decade resolved them in favor of the carrier, and the company and its officers have acted in reliance on the administrative tribunal's construction of the statute. At this late day the courts ought not to uphold an application of the law contradictory of this settled administrative interpretation."

[12-a] *U.S.* v. *Chicago North Shore R. Co.*, 288 U.S. 1, last par. page 13 and par. top of page 14.

The Commission's report in *National Poultry, Butter & Egg Assn.* v. *N. Y. C. R. R. Co.*, 52 I.C.C. 47, discloses at pages 48 and 49 that tariff tolerance rules in connection with damage claims on shell eggs had been in effect in the east as early as February, 1916, or more than 37 years ago. The Commission's approval of a tolerance rule, as it is set forth in the case just cited, dates from January 21, 1919, or over 34 years ago.

Prior to that the Commission approved tolerance rules in connection with grain in *Crouch Grain Co.* v. *A. T. & S. F. Ry. Co.*, 36 I.C.C. 265, decided October 5, 1915, and 41 I.C.C. 717, decided November 10, 1916. In the last mentioned case the Commission approved the lawfulness of a tariff rule which provided that in the adjustment of claims for loss allowances for natural shrinkage to be deducted from the claims there should be ⅛ of 1 percent on wheat, flax seed, rye, oats and barley, and ¼ of 1 percent on corn.

In the foregoing case the Commission held that limitation of liability was "not against losses *caused by the carrier or its connections*, but rather against liability for losses *due to the inherent nature of the commodities themselves* and attributable to no human agency."

Tolerance regulations of carriers and the principles, with reference to the inherent nature of commodities, were recognized by the Commission and courts long before the egg proceedings here involved. In Weight Tolerance Rule, 192 I.C.C. 71, 77, the Commission approved the tariff regulation providing weight differentials on coal, due to moisture evaporation or precipitation, inherent in that commodity. In *Fuel Sales Corp.* v. *Delaware L. & W. R. R. Co.*, 225 I.C.C. 288, 291, the Commission granted reparations based upon loss in weight of washed anthracite coal [fol. 94] between point of origin and destination, covering a greater percent loss than allowed under the carrier tariff rule, both the Commission decision and carrier rule being based upon moisture evaporation inherent in the commodity.

Tolerances such as here serve a useful, practical and lawful purpose. They are arrangements of the kind which

Mr. Justice Brandeis had in mind when he said in Luckenbach v. McCahan:[13]

> "It is credible to the ingenuity of business men that an arrangement should have been devised which is consonent both with the needs of commerce and the demands of justice.".

Furthermore, the United States Department of Agriculture and the trade have provided tolerances for the normal expectancy of shell damage to eggs in grading. And the Army of the United States when making its inspection of shell eggs grants allowances for shell damage.

Interpretation of Section 20(11)

The contemporary construction of an act is entitled to great weight in its interpretation. The provision in question, viz., Section 20(11) was interpreted in a proceeding by the Commission in 1915. Upon the urging of interested parties a hearing was held and the Commission interpreted the newly enacted Cummine Amendment.[14]

Railroads, Chambers of Commerce, merchants and traffic associations, and shippers participated in the proceeding. After carefully considering numerous suggested proposals and interpretations, the report stated its construction of the Amendment, which is deemed pertinent to questions here raised, and is quoted. At page 691-692, it is stated:

> "It seems clear that these provisions are, in common with the other matters governed by the amendment, confined to instances of loss, damage, or injury caused by the carriers. * * * In the interest of thorough understandings and to avoid controversies it is very desirable that these rules be uniform for all the carriers of the country." At page 695 it is stated: "There is, however, no inhibition as to the limitation of the liability of a carrier for losses not caused by it or a succeeding carrier to which the

[13] 248 U.S. 139, 149.

[14] In re The Cummins Amendment—33 I.C.C. 682 (1915).

property may be delivered. * * * From this it follows that under the amendment a contract or a tariff may lawfully limit to a reasonable maximum the liability of a carrier for losses which it does not cause. * * * (p. 596.)

[fol. 95] "The liability provided by the rates so established by the Commission is applicable no less to instances of loss or damage chargeable to the negligence of the carrier than to those occasioned by causes beyond the carrier's control."

The United States Supreme Court early interpreted the Carmack Amendment as follows:[15]

"What is the liability imposed upon the carrier? It is a liability to any holder of the bill of lading which the primary carrier is required to issue 'for any loss, damage or injury to such property caused by it,' or by any connecting carrier to whom the goods are delivered. The suggestion that an absolute liability exists for every loss, damage or injury, from any and every cause, would be to make such a carrier an absolute insurer and liable for unavoidable loss or damage though due to uncontrollable forces. That this was the intent of Congress is not conceivable. To give such emphasis to the words, 'any loss or damage,' would be to ignore the qualifying words, 'caused by it.' The liability thus imposed is limited to 'any loss, injury or damage caused by it or a succeeding carrier to whom the property may be delivered,' and plainly implies a liability for some default in its common law duty as a common carrier."

The Commission Action Is within the Congressional Grant of Authority. And, it does not Limit Carrier Liability in Violation of Section 20(11).

Power has been granted the Interstate Commerce Commission by Congress in the broadest possible terms to decide the matters in this transportation controversy.

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[15] *Adams Express Co.* v. *Croninger*, 226 U.S. 491, 503, 506-507 (1913).

The Act[16] requires railroads to publish tariff schedules, including "any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered."

The Act[17] also authorizes the Commission, after hearing and determination that any "regulation", among other provisions, "is or will be unjust or unreasonable * * * or otherwise in violation of any provisions of this chapter", to "determine and prescribe * * * what * * * regulation * * * will be just, fair and reasonable, to be thereafter followed."

The method of removing from a damage claim filed on shell eggs that portion of the damage for which the railroads are not responsible is a practice over which the Interstate Commerce Commission is given jurisdiction in broad language.

[fol. 96] The restraint imposed upon the carriers and the Commission by Section 20(11) of the Act is not broad, but is in terms narrowly limited. That section refers to carrier liability for any loss, damage or injury "caused by it." Neither the Act nor the common law makes the carrier liable for damage which it does not cause. A statute which purported to do so would present serious constitutional question. The liability which the carriers and Commission are forbidden by Section 20(11) to limit is a liability for damage caused by the carrier.

Hence, on the one hand power is granted the carriers and Commission in the broadest terms, while on the other hand the restraint upon their power is couched in carefully restricted language.

To deny the Commission authority to do what it here has done is to drop out of Section 20(11) of the Act, the restrictive language "caused by it" and to limit the broad grant of powers which the United States Supreme Court consistently has recognized that the Commission possesses. To strike the tolerance regulation down requires us to go a long way. Surely, it is hardly to be said consistent with well accepted principles of statutory construction.

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[16] 49 U.S.C. Section 6.

[17] Section 15, see also Section 13(2).

Courts have harmonized provisions of the Act to regulate commerce in order to give full effect to the purpose of the statute to prevent involuntary rebates, discriminations and other practices which the act was intended to remedy. *In Arkansas Fertilizer Co. v. U.S.*[17-a] *the court says:*

> "In construing remedial statutes, especially those of a generic character, courts have not hesitated to restrict and modify the ordinary meaning of words and phrases, and even of entire paragraphs, in order to harmonize conflicting or inconsistent provisions and so enable all of them to contribute in proper degree to the object sought to be accomplished. Instances of this kind are too familiar to require citation. Indeed, the Supreme Court, in the Abilene Case, 204 U.S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, declared that a right of action as old as the common law had been taken away by the act to regulate commerce, since otherwise full effect could not be given to the purpose of that statute to prevent discriminations. Bearing in mind how rarely suits were brought to recover damages for excessive railroad charges, and how easily collusive delay in the payment of freight bills could be utilized, as the Commission points out, to give preferences which are actual rebates; it seems well within precedent to reject petitioner's contention and to uphold a construction under which, as Commissioner Lane observes:
>
> "'The act becomes workable and enforceable from the standpoint of shipper, carrier, and the Commission itself.'".

[fol. 97] The Interstate Commerce Commission does not base its approval of the tolerance rule, in whole or in part, upon any kind of limitation of carrier liability, but on the contrary, bases that approval upon a finding of fact that the regulations "are directed against losses due to the inherent nature of shell eggs *rather than against losses caused by the carrier.* These regulations merely establish a means to determine the amount of damage existing at

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[17-a] 193 Fed. 667, particularly the last par. on page 670.

the time the shipment is received by the carrier, and the amount of damage resulting . . . during transportation solely because of the inherent nature of the shipment.'"[18]

No one contends that carrier liability may be reduced, lessened or limited contrary to the provisions of Section 20(11) of the Act.

Losses caused deliberately, wilfully, maliciously and intentionally by the carriers or their agents, or due to their negligence, or to accidents in transit, such as broken cases, damage to entire carload, and the breakage of large numbers of eggs in a shipment, are not limited by these regulations. They purport only to exempt the carrier from losses the carrier does not cause. That is the whole basis of the report.

The question before us is whether these carrier regulations which seek to avoid liability for loss *not caused by them* are reasonable. To determine the reasonableness of such a regulation requires the experience and knowledge of transportation conditions possessed by the Commission.

This is the kind of a question Congress intended the Commission to have the authority to determine.

The Interstate Commerce Commission and the carriers contend that there is a certain minimum amount of damage in every crate of eggs when it is delivered to the carrier. The Commission has made its findings of fact as to what the minimum damage is. The evidence supports those findings. Indeed, the findings are corroborated by United States Department of Agriculture and War Department practices in grading shell eggs. And, much of the evidence comes from Department of Agriculture witnesses themselves, examined by their own attorney.

[fol. 98] The Commission problem herein was to decide the extremely complex questions posed by the rail regulations, seeking to avoid damage liability relating to shell eggs, which was inherent with that fragile commodity and that part of the damage which is not due to carrier action or negligence. As shown by the report consideration of evidence,[19] eggs inherently have certain

[18] 284 I.C.C. 377, 383.

[19] 284 I.C.C. 377, 384, 385.

defects which are not revealed by customary inspections at origin points, and sometimes not by the most careful candling process. Despite the efforts of the past to improve methods of packing and inspection it is recognized by experts,[20] including the Department of Agriculture, that some small percent of undisclosed damage exists in all cases of eggs, increasing in percentage as they move from farms to packing plant, to points of loading on cars, in the loading process, in transit, and at point of unloading. It would appear most difficult to determine with accuracy the portions of such damage which exist at the time of delivery to carriers, occurs during transit, or results from shipper inspection at destination. The report,[21] found that the slightest movement in transportation may cause additional damage to such eggs, which cannot be imputed to carrier negligence, but rather to the inherent nature of the commodity.

The task of regulating interstate commerce has been vested in the Commission. Congress has manifested a general legislative purpose to establish a system of administrative control. And that system has been progressively expanded. So that the principle now is well recognized that "the Commission is the tribunal to which the tasks of regulation have been expressly committed, and that the courts will restrict their power of censorship to the condemnation of abuse of authority",[22]

The crux of this lawsuit is the Commission holding[23] that the regulations as to tolerance are not limitations of [fol. 99] carrier liability, but are tariff rules designed to relieve carriers from paying damage claims which are not attributable to their negligence or other fault.

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[20] id., 391, 392, 394, 395.

[21] id., 402.

[22] Sharfman, The Interstate Commerce Commission, Vol. II, p. 389, published by the Commonwealth Fund Legal Research Committee; Chief Justice White in *Interstate Commerce Commission* v. *Ill. Cent. R.R.*, 215 U.S. 452 (1910) at p. 470; Justice Lamar in *Interstate Commerce Commission* v. *Union Pacific R.R.*, 222 U.S. 541 (1912) at p. 547-548.

[23] 284 I.C.C. 377, at page 401.

This is a question of fact relating to the application of the provisions of the Act, which legally can be decided only by the Commission and when so decided with substantial support of record evidence will not be disturbed by the courts.[24]

In *I.C.C.* v. *Union Pacific R.R.* (supra), at pp. 547-548, the court made its classic statement of principle as follows:

> "In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. 'The findings of the Commission are made by the law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.' *Ill. Cent.* v. *I.C.C.*, 206 U.S. 441. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order."

An analogy to the instant case, and a close one, is found in controversies as to whether rates and other practices are unreasonable or discriminatory. Sharfman, supra, at page 424, summarizes the results of the cases:

> "Recognizing that the tasks of regulation have been vested in the Commission and that judicial review is restricted, essentially to the issue of legal power, the courts have declined to assume jurisdiction over all determinations involving the exercise of administra-

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[24] *I.C.C.* v. *Union Pacific R. R.*, 222 U.S. 541, 547-548; *Miss. Valley Barge Line Co.* v. *U.S., et al.*, 292 U.S. 282, 286-287; *Board of Trade of Kansas City, et al.*, v. *U.S., et al.*, 314 U.S. 534, 546-548. See also, *National Labor Relations Board* v. *Hearst*, 322 U.S. 111, top of Page 131.

tive discretion. Such determinations have been treated as 'questions of fact' to be freely and finally established by the Commission in its application of the general standards laid down by statute. The problem has arisen most frequently in connection with controversies as to whether rates and practices are unreasonable or unjustly discriminatory. The Commission's findings in such proceedings embrace not only the primary objective, or evidentiary facts disclosed by the record, but the conclusions drawn therefrom as ultimate facts. In both processes administrative judgments are reached. Conflicting or inconclusive testimony may necessitate the resolution of doubt as to the evidentiary facts; and even if there were no dispute as to the evidentiary facts, the conclusions drawn therefrom as ultimate facts—that the rates or practices at issue are unreasonable or unjustly discriminatory—necessarily constitute an expression of judgment. The courts seldom distinguish [fol. 100] between evidentiary facts and ultimate facts, except that the latter category is sometimes referred to as involving, not merely 'questions of fact', but 'mixed questions of fact and law'; both groups of findings are held to be free from judicial interference. *In these circumstances, and assuming the absence of errors of law, judicial review is confined to a determination as to whether there is evidence to support the administrative conclusions, regardless of whether the courts would themselves reach the same conclusions.* In other words, the element of judgment or discretion which inheres in the administrative method is allowed free play, and determinations which reflect such judgment or discretion are clothed with finality." (Emphasis supplied.)

Many subsequent court decisions have continued the basic standard in *I.C.C.* v. *Union Pacific R.R., supra,* which the Commission has followed in its consideration and determination of rail rate matters. With practical unanimity the decisions have held that Commission determinations, with respect to complicated rate matters,

are in part the exercise of sound discretion and experienced judgment, which courts will not disturb where orders are supported by substantial evidence. As stated in *Virginian Ry. Co.* v. *United States*, 272 U.S. 658, 665-666 (1926):

> "The finding of reasonableness, like that of undue prejudice, is a determination of a fact by a tribunal 'informed by experience.' *Illinois Central R.R. Co.*, v. *Interstate Commerce Commission*, 206 U.S. 441, 454. This court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, or with the alleged inconsistency with findings made in other proceedings before it."

In *Mississippi Valley Barge Line Co.* v. *United States et al.*, 292 U.S. 282, 286, 287, the Court held that "The structure of a rate schedule calls in peculiar measure for the use of that enlightened judgment which the Commission by training and experience is qualified to form" and added:

> "The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body. In this instance the care and patience with which the Commission fulfilled its appointed task are plain, even to the casual reader, upon the face of its report."

In a later case, *Board of Trade of Kansas City et al.* v. *United States et al.*, 314 U.S. 534, 546-548, the Court stated, in connection with the Commission authority and judicial review of Commission action in respect to rail-rate cases, that

> "The process of rate making is essentially empiric. The stuff of the process is fluid and changing—the resultant of factors that must be valued as well as weighed. Congress has therefore delegated the enforcement of transportation policy to a permanent [fol. 101] expert body and has charged it with the duty of being responsive to the dynamic character of transportation problems. Cf. *Railroad Commis-*

sion v. *Rowan & Nichols Oil Co.*, 310 U.S. 573, 581-582.

* * * * *

"We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission. It is not for us to tinker with so sensitive an organism as the grain rate structure, only a minor phase of which is caught in the record before us. If we were to grant the relief sought by the appellants, we would be restoring evils which the exclusive ratebreak adjustment was designed to remove—evils which, for all we know, would be far more serious than those complained of by the appellants."

In a still later case, *New York et al.* v. *United States et al.*, 331 U.S. 284, 328, the Court quoted with approval from the Commission report in *Class Rate Investigation*, 1939, 262 I.C.C. 447, 693, a statement of considerations found necessary and applied to decisions as to rate reasonableness, such as herein involved, as follows:

"Discretion and flexibility of judgment within reasonable limits have always attended the use of costs in making of rates. *Costs alone do not determine the maximum limits of rates. Neither do they control the contours of rate scales or fix the relations between rates or between rate scales. Other factors along with costs must be considered and given due weight in these aspects of rate making.* (Emphasis supplied)".

That quotation in part accounts for the Court opinion statement on the same page, as follows:

"We start, of course, from the premise that on a subject of transportation economics, such as this one, the Commission's judgment is entitled to great weight. *The appraisal of cost figures is itself a task for experts, since these costs involve many estimates and assumptions and, unlike a problem in calculus, cannot be proved right or wrong. They are, indeed, only*

guides to judgment. Their weight and significance require expert appraisal." (Emphasis supplied.) [25]

Conclusion

I. The Commission's power to act in the case at bar depends upon the existence of fact. That fact is whether damage with the limit of the 3 percent and 5 percent tolerances is caused by the carriers.

The Commission has made a finding, which is supported by the evidence, that such damage is not caused by the carriers.

Under the decisions that finding may not be disturbed if it is supported by substantial evidence.

[fol. 102] The Commission's power to act in many other cases depends upon the existence of fact. The Supreme Court, in *Interstate Commerce Commission* v. *Union Pacific RR, supra, said:*

> "... it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. *But questions of fact may be involved in the determination of questions of law*, so that an order, regular on its face may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power."

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[25] See also *Rochester Telephone Co.* v. *U.S.*, 307 U.S. 125; *Western Paper Makers Chemical Co.* v. *U.S.*, 271 U.S. 268; *U.S.* v. *Wabash R. Co.*, 321 U.S. 403; *U.S.* v. *U.S. Smelting Co., et al.*, 339 U.S. 186.

Questions of fact are involved in the determination of other questions of law. (1) Whether a rate is so low as to be confiscatory, and therefore in violation of the Constitution; and (2) whether rates and practices are unreasonable or discriminatory, and therefore in violation of the statute, are familiar examples.

In these instances, also, Commission findings of fact are binding upon the courts if supported by substantial evidence.

Fundamentally, there is no difference between the finality of the Commission's finding of the fact upon which the rule of law depends in these cases and the finality of the Commission's finding that the damage, within tolerance limits, is in the crates when delivered to the carriers.

The narrow concept of judicial review reflected in the Supreme Court decisions is based upon the recognition of the general legislative intent that the Commission shall be the controlling regulative tribunal in its field of special jurisdiction, and as the single expert agency deliberately created for effectuating large public ends in its specific sphere.

II. Courts continue to have the power to protect shippers against wilful, malicious, negligent or other damage to eggs caused by the carriers. Those cases will be decided when they arise. This is in the best common law tradition. When the question was put to Lord Nottingham, "Where will you stop if you do not stop here", his answer was, "I [fol. 103] will tell you where I will stop: I will stop wherever any visible inconvenience doth appear." (Supra, Note 12.)

III. In the present case, no shipper is compelled to accept the 3 percent and 5 percent tolerances approved by the Commission and published in the tariff. The shippers are afforded an opportunity to have the exact amount of point of origin damage determined and used. The regulations afford the shipper an opportunity of presenting an inspection certificate of federal or state inspection agencies showing the extent of the physical damage to the eggs determined at the rail point of origin of the shipment immediately prior

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to tender for rail transportation. To the damage shown in such certificates would be added 1 percent for further damage in transit due to the inherent nature of the eggs, and the total thus computed would be deducted from the claim against the railroad for damages found to exist at destination for which the railroad might be liable.

The Interstate Commerce Commission has heard the testimony of experts appearing on both sides of the controversy and has taken and analyzed page after page of testimony and numerous statistics. As an administrative body of experts, the Commission has exercised its judgment, and has found that based upon the record before it tolerances of 3 and 5 percent would be fair and reasonable for application throughout the country.

IV. The method, approved by the Commission, of removing from a damage claim filed on shell eggs that portion of the damage for which the railroads are not responsible does not limit carrier liability in violation of Section 20(11) of the Act.

The broad grant of power to the Commission should not be cut down.

The language "caused by it" should not be dropped out of Section 20(11), in reference to the liability of a carrier which may not be limited for loss, damage or injury.

The Commission found the fact that the tolerances do not include damage caused by the carriers.

That finding is supported by substantial evidence.

And, the Court is bound by that finding under the authorities.

The regulation here involved is fair and reasonable.

[fol. 104] The regulation constitutes a part of the whole problem of the rate structure, which requires the expert experience and judgment of the Commission.

The tariff in this case is not a limitation of liability; it is no more than a factual determination of damage to eggs which is not caused by the carrier.

V. The Commission's findings of fact are supported by substantial evidence.

Judgment will be entered for the defendants, who are

directed to prepare findings and conclusions and judgment pursuant to the foregoing opinion.

(S.) —— ——, Judge, John C. Pickett, Judge, Willis W. Ritter, Judge.

[File endorsement omitted.]

[fol. 105] IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

DISSENTING OPINION

KNOUS, District Judge, Dissenting.

The Utah Poultry & Farmers Cooperative, a Utah corporation, brought this suit against the Interstate Commerce Commission and the United States to set aside and annul an order of the Commission which approved as reasonable a five per cent. (5%) damage tolerance on eggs shipped by railroads and not processed at the rail point of origin, and a three per cent. (3%) tolerance on eggs processed at the rail point of origin, (284 I.C.C. 377) and to enjoin its enforcement. The Secretary of Agriculture of the United States filed a motion to intervene as a party plaintiff. The United States was a statutory defendant and in opposing the damage tolerance rule is represented here by representatives of the Department of Justice. In order to present its interest as a shipper, the United States in its answer admitted each and every allegation of the complaint and asked for the same relief as the plaintiff. Since the plaintiff is seeking to enjoin the enforcement of an order of the Interstate Commerce Commission, the proceeding is required to be heard and determined by a district court of three judges. 28 U.S.C.A., section 2325.

The Interstate Commerce Commission on its own motion instituted an investigation of the reasonableness and lawfulness of the special regulations governing descriptions, marks, inspection and delivery, and the handling of claims in connection with the transportation, in interstate

[fol. 106] or foreign commerce, of shell eggs from, to, and between points in the United States with a view to making findings and presenting reasonable rules, regulations, and practices relative to such transportation.

Prior to July 24, 1948, the rules and regulations governing the transportation of eggs were those which became effective July 15, 1919. Under those rules and regulations, no inspection of the contents of cases containing eggs was permitted at Boston, New York or Philadelphia when no cases showed external evidence of damage; or the cases had not been recoopered in transit; or no part of the lading had shifted; or the lading had not been transferred in transit from one car to another. At all other points the consignees were permitted to lift the lids of twenty-five per cent. (25%) of the cases, not exceeding twenty (20) in one shipment, and examine the top layers for damage. If damage to the contents was disclosed by such inspection, the rules permitted further examination of the top layers of other cases selected by the consignee. All cases containing damaged eggs were then set aside for reconditioning. The tariffs have not been basically changed since 1918.

The prior regulations required shippers of eggs to note on the shipping order and bill of lading the character of the shipment. These classifications included rehandled and repacked eggs, checked or dirty eggs, and others which were not specifically classified in connection with egg shipments except storage packed eggs, storage packed dirties, and rehandled and repacked eggs. If not more than five per cent. (5%) of the eggs were damaged, no claim was allowed. This five per cent. (5%) allowance was referred to as a tolerance. Where the damage exceeded five per cent. (5%), claims were allowed for all damage in excess thereof if the examination showed carrier liability. The tolerance applied only in connection with eggs described on the shipping order and bill of lading as current receipts and rehandled current receipts. On shipments of storage packed eggs, storage packed dirties, and rehandled or repacked eggs, claims for actual damage as evidenced by a notation made on a freight receipt by the inspectors was allowed. [fol. 107] Under the former regulations, the carriers were paying large payments for damage to shipments of shell

eggs. In an effort to improve the situation certain changes in the regulations were proposed and were permitted to become effective by the Commission. On July 24, 1948, the instant proceeding was instituted to test the validity of these regulations.

The proposed regulations differed principally from the old regulations in the following respects: (1) They authorized the opening by the consignee of each package in the shipment, and (2) they substituted tolerances of four per cent. (4%) and six per cent. (6%) respectively, on shipments of eggs of all descriptions whether placed in packages at the rail point of origin of the shipment or at points other than the rail point of origin. The requirements under the old regulations that shippers must note on the shipping order and bill of lading the description of the shipment were eliminated in the proposed regulations.

After extensive hearings the Commission found that five per cent. (5%) tolerance on eggs, other than those rehandled and repacked at the rail point of origin, was not unreasonable or unlawful. The Commission further found that the proposed tolerances of four per cent. (4%) on eggs packed at the rail point of origin, and six per cent. (6%) on eggs packed at points other than the rail point of origin were not justified, but that tolerances of three per cent. (3%) and five per cent. (5%), respectively, would be reasonable.

In the course of its report the Commission states at page 383:

> "Respondents are not attempting by the proposed regulations to limit carrier liability, in that they are directed against losses due to the inherent nature of shell eggs rather than against losses caused by the carriers. These regulations merely establish a means to determine the amount of damage existing at the time the shipment is received by the carrier and the amount of damage resulting solely during transportation because of the inherent nature of the shipment."

The plaintiff, the Secretary of Agriculture and others opposing the tariff allege that the damage tolerance rules approved by the Commission are attempts to limit com-

mon carrier liability and are, therefore, null and void as a matter of law because they are contrary [fol. 108] to the provisions of 49 U.S.C.A., section 20(11)[1] and ask this court to hold unlawful and set aside the Commission's report, and to direct the Commission to reject and to strike from its tariff files the damage tolerance rules approved by its report.

The intervening railroads[2] contend that there is no limi-

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[1] This section provides in part: "Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability imposed;

* * * * * * *

". . . for the full actual loss, damage or injury to such property caused by it or by any such common carrier, railroad, or transportation company . . . notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; *and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void:* . . . (emphasis supplied)"

[2] One hundred and thirty-one railroads intervened as parties defendant to this proceeding.

tation of liability involved, and that, therefore, Section 1 (6) and not Section 20 (11) applies, and deny that the Commission's order is unreasonable or without support in the evidence. They further contend that the provisions of the tariffs are just and reasonable practices affecting the classification of eggs established by them in compliance with their duty imposed by virtue of Section 1 (6) of the Act.[3]

[fol. 109] The issue presented is whether the order approving a tolerance tariff was a limitation of liability prohibited by the Carmack Amendment. (Section 20 (11) of the Interstate Commerce Act.) The railroads and the I.C.C. concede that if it is a limitation of liability it is invalid. They say, however, that tolerance damage rules and practices are designed to relieve carriers from paying claims for damages which are not attributable to the negligence of the railroads or caused by them. In other words, it is the fixing of a damage which is due to the inherent character of eggs, one which is the natural result of producing, pack-

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[3] This section provides: "It is made the duty of all common carriers subject to the provisions of this chapter to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this chapter which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this chapter upon just and reasonable terms and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful."

ing and moving eggs and for which the carrier is not responsible.

The tariffs approved by the Commission provide in part:

"Upon arrival at destinations of shipments of 'current receipts' or 'graded' eggs in C.L. or L.C.L. lots, consignee or his authorized representative shall have the privilege before eggs leave the possession of carrier and under supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload, or of twenty-five per cent. (25%) with a maximum of twenty (20) cases, of the cases of any L.C.L. lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining the actual damage in that case.

"If such examination shows five per cent. (5%) or less damage, it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

"If such examination, however, discloses more than five per cent. (5%) damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing more than five per cent. (5%) damage. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

* * * * * * *

"Section 6.—In connection with shipment of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five per cent. (5%) of the eggs are damaged, [fol. 110] no claim will be allowed. Where damage exceeds five per cent. (5%), claims shall be allowed for all damage in excess of five per cent. (5%) if investigation develops carrier's liability.

"Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.

The position of the Railroad and the I.C.C. is plausible and practical, but I am unable to arrive at a conclusion that the tariff is not a limitation on their liability to shippers of eggs. Eggs are not inherently perishable. Checked and cracked eggs, when properly handled, can be shipped interstate without further damage and can be sold to consumers. External force must be applied to such eggs, as well as to perfect eggs, before they are damaged to the extent that they become unmarketable or claims made for damage.

The order does not authorize or approve a regulation which states that the presence of five per cent. (5%) or less of damaged eggs is not evidence by itself of negligence, or that unless negligence is proved by the shipper, he cannot recover for five per cent. (5%) of his damages. The tariff provides that when damage exceeds five per cent (5%), claims shall be allowed for all damage in excess of five per cent. (5%), if investigation develops carrier liability. In all damage claims a shipper may recover only his loss less the tolerances provided for. Thus, one shipper who sends a carload of eggs containing two per cent. (2%) checked or cracked eggs, collects the same amount as another shipper who sends a carload of eggs, five per cent. (5%) of which are checked or cracked, if the contents of both cars are destroyed or damaged as a consequence of the carrier's negligence. A shipper might ship two cases of eggs from the lot, one car having a five per cent. (5%) damage, the other none. The consignee would accept the undamaged car at full price and the shipper would lose five per cent. (5%) of the value of the second car. To me it appears inescapable that such results limit the liability of the carrier and violate the prohibition of Section 20 (11) of the Act.

This proceeding is not analogous to the cases cited by the [fol. 111] defendants.[5] There the shippers sued the carriers for damages to certain perishables and the court fixed a tolerance on the basis that "there will always be a certain amount of damage which cannot be avoided even by the

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[5] *Bronstein* v. *Baltimore & O. R. Co.*, E. D., Pa., 29 F.S. 837; *Meltzer* v. *Pennsylvania R. Co.*, E. D. Pa., 29 F.S. 840; *Meltzer* v. *Baltimore & O. R. Co.*, E. D. Pa., 38 F.S. 391.

most careful handling" and that it was necessary "to fix a norm or limit of tolerance, within which the presence of damaged melons in the cars will not amount to proof of negligence." *Bronstein* v. *Baltimore & Ohio R. Co.*, supra, at page 839.

"The concept of negligence has entered into the liability of carriers after the passage of the Cummins Amendment to the Interstate Commerce Act. The last two provisos of the amendment read:

"Provided further, that it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years; Provided, however, that if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded or damage in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery." (Act of March 4, 1915, 38 Stat. 1196, 1197, c. 176 amending the Interstate Commerce Act of February 4, 1887, c. 104, 24 Stat. 379, as amended by Sec. 7 of the Act of June 29, 1906, c. 3591, 34 Stat. 584, 593.)

In *Chesapeake & O. R. Co.* v. *Thompson Mfg. Co.*, 270 U.S. 416, the Supreme Court held that a shipper's failure to give written notice of a claim to the carrier would bar the shipper from recovery for damage to its good unless it could bring its case within the terms of the final proviso. The Court also held that the negligence referred to in the Cummins Amendment did not mean liability without fault, but negligence in fact, and that an instruction to the jury that if the damage to the shipment was not due to an act of God or the public enemy or to the inherent condition of the goods, they might return a verdict for the shipper, was erroneous because it resolved the issue of negligence in the shipper's favor.

The second proviso to the effect that no notice is required if damage is caused in transit by carelessness or negligence was omitted in the 1930 Amendment. Act, April 23, 1930, 49 U.S.C.A., Section 20 (11). (See Historical Note to 49 U.S.C.A., Section 20 (11)).

[fol. 112] I have no doubt but that the courts have the power to fix a tolerance if the evidence warrants it in a particular case, but the Commission does not have that power generally to fix a tolerance in all cases because Section 20 (11) prohibits the execution of any contract, receipt, rule or regulation which exempts a carrier from liability. Although I am reluctant to so decide, it appears to me that to hold otherwise paves the way for the establishment of damage tolerance for all commodities shipped and permits allowance which should be determined in courts of law.

I think the order of the Interstate Commerce Commission in Numbers 5792 and 30030, entitled "Special Regulations, Eggs" should be set aside and annulled.

(S.) William Lee Knous, United States District Judge.

[File endorsement omitted.]

[fol. 113] IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

SUBMISSION OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed May 7, 1954—Omitted in Printing

[File endorsement omitted.]

[fol. 114] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

FINDINGS OF FACT—Filed May 7, 1954

1. By order dated July 23, 1948, the Interstate Commerce Commission on its own motion instituted an investigation into and concerning the reasonableness and otherwise law-

fulness of the special regulations governing descriptions, marks, inspection and delivery, and the handling of claims thereunder, in connection with the transportation in interstate or foreign commerce of shell eggs from, to, and between points in the United States with a view to making findings and prescribing reasonable rules, regulations and practices relative to such transportation. The Commission gave the investigation its Docket No. 30030, and entitled it *Special Regulations—Eggs.*

2. The Commission conducted five hearings at which those interested submitted voluminous testimony and a large number of exhibits. During the course of the investigation before the Commission the railroads filed tariff schedules providing that on shell eggs placed in packages at rail point of origin no claim shall be allowed where the physical damage to the eggs at destination does not exceed 4 percent of the contents of the packages containing damaged eggs; that on eggs placed in packages at other than rail point of origin no claim shall be allowed where the damage does not exceed 6 percent; that where damage exceeds 4 and 6 percent, respectively, claims shall be allowed in excess of those percentages if investigation develops carrier liability; that these allowances do not apply [fol. 115] wherever a shipper furnishes a federal or state inspection agency certificate showing point of origin shell damage to be other than 4 and 6 percent, respectively, and in such cases the percentage of actual damage shown on such certificates, plus 1 percent to cover damage in transit due to the inherent nature of shell eggs, shall be used. Operation of the schedules was suspended by the Commission in its Investigation and Suspension Docket No. 5792. The suspension proceeding was consolidated with the initial investigation (I.C.C. Docket 30030) for hearing and disposition. The case was briefed, an Examiners' proposed report was issued, to which exceptions and replies thereto were filed, and the case was orally argued before the entire Commission.

3. Thereafter a report and orders of the Commission, dated February 4, 1952, reported at 284 I.C.C. 377, were

served upon the interested parties. In its report the Commission made the following ultimate finding:

> "We find that the present 5 percent tolerance on eggs, other than those rehandled and repacked at the rail point of origin, is not shown to be unreasonable or otherwise unlawful. We further find that the proposed tolerances of 4 percent on eggs packed at the rail point of origin, and 6 percent on eggs packed at points other than the rail point of origin have not been justified, but that tolerances of 3 and 5 percent, respectively, would be reasonable. Orders will be entered discontinuing the investigation in the title proceeding, and requiring the cancellation of the suspended schedules without prejudice to the filing of new schedules in conformity with the findings herein."

4. After the effective dates of the Commission's aforementioned orders, schedules were filed with the Commission and became effective publishing regulations in conformity with the Commission's findings in the aforementioned decision.

5. The present suit is brought by Utah Poultry & Farmers Cooperative against the United States under the provisions of Title 28 U.S.C.A., Section 1336, to annul and set aside the Commission's decision hereinbefore referred to, and for a mandatory injunction requiring the Commission to cancel and set aside the tariff filed with it by the railroads, containing the regulations in conformity with the Commission's conclusions in the aforementioned decision. Armour & Company, Swift & Company, and the Secretary of [fol. 116] Agriculture of the United States have intervened herein and join in the attack on the Commission's report and orders. The Interstate Commerce Commission and railroads which had been named as parties respondent in the Commission's order of July 23, 1948, intervened in the defense of the report and orders.

6. The present suit was instituted after the effective dates of the Commission's aforementioned report and orders and after the effective date of the tariff filed with the Commission by the railroads containing the regulations in

conformity with the Commission's conclusions in *Special Regulations—Eggs*, 284 I.C.C. 377.

7. A three judge court was convened pursuant to statutory provisions (Title 28, Section 2284 and 2325). The record upon which the Commission's report and orders of February 4, 1952, are based has been introduced in evidence and considered by the court in reaching its decision.

8. The physical condition of shell eggs at the time they are offered for transportation is a sound and proper basis for regulations governing loss and damage claims incident to the rail transportation of eggs. The tolerance provisions heretofore referred to do not attempt to limit carrier liability for loss or damage caused by the railroads. They are directed against loss resulting from the physical condition of the eggs at the time they are offered for rail transportation. They provide a reasonable and non-discriminatory means by which to determine the amount of damage existing at the time shipments are received by carriers for transportation, and the amount of damage resulting solely during transportation because of the inherent nature of the shipments. The provisions merely constitute reasonable tariff rules and practices designed to protect the railroads against losses for damages which are not attributable to the railroads, but which result from the inherent nature of shell eggs.

9. Tolerance rules in connection with damage claims arising out of the transportation of shell eggs by rail have been in effect for more than 37 years, and with the approval of the Commission for more than 34 years without challenge in the courts.

[fol. 117] 10. The trade, the Army of the United States, and the United States Department of Agriculture all recognize and provide tolerances for the normal expectancy of shell damage in grading eggs substantially higher than the tolerance percentages fixed by the tariffs of the intervening railroads.

11. The report of the Commission herein (284 I.C.C. 377) is hereby adopted by reference and made a part of these findings of fact. The findings in that report and the orders entered thereunder are entirely proper and within the scope of the statutory authority of the Commission.

They are adequately supported by substantial evidence. The tariff tolerance provisions referred to in that report do not limit carrier liability for loss or damage caused by the intervening railroads and do not contravene the prohibition contained in Section 20(11) of the Interstate Commerce Act as amended.

12. There is no basis in fact which would justify the granting of an injunction as prayed for.

Conclusions of Law

I. This court has jurisdiction to determine the lawfulness of the report and orders of the Interstate Commerce Commission here involved.

II. This court has no jurisdiction to consider the lawfulness of the tariff filed with the Commission after the latter's orders became effective; that question can only be considered by the court after a proceeding before the Commission brought under the provisions of Section 13 of the Interstate Commerce Act as amended.

III. The Commission's report and orders dated February 4, 1952, in *Special Regulations—Eggs*, 284 I.C.C. 377, are valid in all respects.

IV. The Commission's findings are adequate to support its order.

V. The orders of the Commission are not beyond its statutory powers in any respect, are not arbitrary, and are not based on findings or conclusions which are erroneous in any respect.

VI. The Commission's report and orders do not restrict liability for loss or damage caused by the intervening railroads and do not violate the provisions of Section 20(11) of the Interstate Commerce Act, as amended.

[fol. 118] VII. The report and orders of the Commission are supported by substantial and probative evidence.

VIII. The complaints should be dismissed at plaintiffs' costs.

(S.) John C. Pickett, U. S. Circuit Judge, Willis W. Ritter, U. S. District Judge.

[fol. 119] IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Civil Action No. C 8-53

UTAH POULTRY & FARMERS COOPERATIVE, a Utah Corporation, Plaintiff,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

FINAL DECREE—Filed May 7, 1954

This cause coming on to be heard before the undersigned who constituted the majority of a Special District Court of three judges sitting, which was convened pursuant to the provisions of Title 28 U.S.C.A., Section 2325, upon complaints brought to set aside and annul a decision and orders of the Interstate Commerce Commission in a proceeding entitled *"Special Regulations—Eggs"*, and for a mandatory injunction requiring the said Commission to cancel and set aside a certain tariff filed by the railroad defendants with the said Commission as a result of the aforementioned report and orders of the Interstate Commerce Commission; and being heard upon the evidence taken before the Interstate Commerce Commission and the report and orders of the Interstate Commerce Commission, as well as upon the arguments and briefs of counsel for all parties; and the cause having been submitted for final decree; and the court having made its findings of fact and conclusions of law which are filed herewith;

Now, therefore, upon the basis of said findings of fact and conclusions of law and for the reasons set forth in the majority opinion of the court heretofore filed, it is, upon motion of counsel for defendants,

[fols. 120-121] Ordered, adjudged and decreed that the complaints be dismissed with costs against the plaintiffs.

(S.) John C. Pickett, U. S. Circuit Judge, Willis W. Ritter, U. S. District Judge.

[File endorsement omitted.]

[fol. 122] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

PETITION OF SECRETARY OF AGRICULTURE FOR APPEAL—Filed May 7, 1954

The Secretary of Agriculture of the United States, being an intervening plaintiff in this action and considering himself aggrieved by the final order, judgment, and decree of this Court entered on March 10, 1954, hereby petitions that an appeal be allowed to the Supreme Court of the United States from said final order, judgment, and decree, and from each and every part thereof; that a citation be issued according to law; and that, because of the great expense involved in preparing copies of the record which must be submitted to the Supreme Court, the original certified copies of proceedings before the Interstate Commerce Commission filed in evidence herein be transmitted to the Supreme Court; and that the material parts of the record, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, (S.) R. L. Farrington, Solicitor, Neil Brooks, Associate Solicitor, Donald A. Campbell, Attorneys for the Secretary of Agriculture.

[fol. 123] Dated: May 5, 1954, Washington, D. C.

[File endorsement omitted.]

[fol. 124] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ORDER ALLOWING APPEAL—May 7, 1954

The Secretary of Agriculture of the United States having made and filed his petition for an appeal to the Supreme Court of the United States from the final judg-

ment of this Court entered in this cause on March 10, 1954, and from each and every part thereof, and having presented and filed his assignment of errors and prayer for reversal and his statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, Therefore, It is hereby Ordered that said appeal be and the same is hereby allowed as prayed for.

It is further Ordered, pursuant to 28 U.S.C. 1952 ed. § 2408, that an appeal bond for costs is not required of the Secretary of Agriculture.

It is further Ordered that a citation shall issue in accordance with law, and that, within forty days from this date, the Clerk of this Court shall transmit to the Clerk of the Supreme Court of the United States the original certified copies of proceedings before the Interstate Commerce Commission on file herein together with a duly [fols. 125-187] authenticated transcript of the material parts of the record in this cause, as designated by praecipe or stipulation of the appellant Secretary of Agriculture and counsel herein.

Done and Ordered this 7 day of May, 1954.

(S.) Willis W. Ritter.

[File endorsement omitted.]

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* * * * * * * *

[fol. 188] In the United States District Court for the District of Utah, Central Division

[Title omitted]

Assignment of Errors and Prayer for Reversal—Filed May 7, 1954

The Secretary of Agriculture, intervening plaintiff in the above-entitled action, in connection with his appeal to the Supreme Court of the United States, hereby files the following assignment of errors upon which he will rely in

prosecuting his appeal from the final order, judgment; and decree of the District Court entered on March 10, 1954.

The District Court erred:

1. In holding and concluding that the "damage tolerance" rules approved by the Commission do not limit the carriers' liability in violation of § 20(11) of the Interstate Commerce Act.

2. In holding and concluding that the phrase "caused by it" in § 20(11) of the Act changes the common law liability of a carrier so as to require proof of actual negligence.

3. In holding and concluding that the susceptibility of eggs to breakage by the application of force is an "inherent vice" within the common law exception to a carrier's liability for damage caused by the inherent vice of the property.

[fol. 189] 4. In holding and concluding that the Commission's order of February 4, 1952, approving damage tolerances as to shell eggs, is supported by adequate findings and substantial evidence on the record as a whole.

5. In holding and concluding that the administrative proceeding embraced a problem of "fair compensation for hauling eggs" and that such a problem was relevant to the issues before the Court.

6. In holding and concluding that "the economic stability of carriers and the maintenance of an adequate national system of railroads were substantially affected" by the damage claim payments made by the railroads.

7. In holding and concluding that the "problem of claims against railroads for damage to egg shipments constitutes a part of the whole problem of the rate structure, which courts many times have held requires the experience and judgment of the Commission."

8. In holding and concluding that payment of damage claims "was uneconomic to the point of being injurious to the national railroad transportation system and to the public interest."

9. In holding and concluding that the acceptance by shippers of payment for the full actual loss, damage, or injury

caused by carriers is, in effect, a "means of obtaining involuntary rebates."

10. In holding and concluding that the Commission made "exhaustive factual studies" and that such studies show "that generally some amount of damage was in the crates at the time they were delivered to the carrier."

11. In holding and concluding that "in every crate of eggs when it is delivered to the carrier" "there is a certain minimum amount of checked, cracked and broken eggs."

12. In holding and concluding that the Commission's decision in the present proceeding is supported by "settled administrative construction" of section 20(11) of the Interstate Commerce Act.

[fols. 190-192] 13. In holding and concluding that "(l)osses caused deliberately, wilfully, maliciously and intentionally by the carriers or their agents, or due to their negligence, or to accidents in transit, such as broken cases, damage to entire carload, and the breakage of large numbers of eggs in a shipment, are not limited by these regulations. They purport only to exempt the carrier from losses the carrier does not cause."

14. In holding and concluding that it "would appear most difficult to determine with accuracy the portions of such damage which exist at the time of delivery to carriers, occurs during transit, or results from shipper inspection at destination."

15. In failing to suspend, enjoin, annul, and set aside the order of the Commission issued on February 4, 1952, which order discontinued the investigation in *Special Regulations, Eggs*, and required the cancellation of the suspended tariff schedules without prejudice to the filing of new schedules in conformity with the findings of the Commission in *Special Regulations, Eggs*, 284 I.C.C. 377.

Wherefore, the Secretary of Agriculture of the United States petitions that the final order, judgment, and decree of the District Court be reversed, that judgment be entered suspending, enjoining, annulling, and setting aside the order

of the Commission and for such other relief as the Court may deem proper.

Respectfully submitted, (S.) R. L. Farrington, Solicitor, Neil Brooks, Associate Solicitor, Donald A. Campbell, Attorneys for the Secretary of Agriculture.

Dated: May 5, 1954, Washington, D. C.

[File endorsement omitted.]

[fol. 193] IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

PETITION OF UTAH POULTRY & FARMERS COOPERATIVE FOR APPEAL—Filed May 7, 1954

Utah Poultry & Farmers Cooperative, plaintiff in the above-entitled cause, and Armour and Company and Swift & Company, intervening plaintiffs therein, feeling themselves aggrieved by the final order and decree of the United States District Court in and for the District of Utah, Central Division, entered in said court on March 10, 1954, pray an appeal from said order and decree to the Supreme Court of the United States.

The particulars wherein said plaintiff and intervening plaintiffs consider the order and decree erroneous are set forth in the assignment of errors accompanying this petition, to which reference is hereby made.

Said plaintiff and intervening plaintiffs pray that a transcript of the record, proceedings, and papers on which said order and decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States.

Dated May 7th, 1954.

[File endorsement omitted.]

[fol. 194] (S.) John H. Pratt, 903 American Security Building, Washington 5, D.C., Attorney for Utah Poultry & Farmers Cooperative, Plaintiff-Appellant; Paul E. Blanchard, 4301 S. Racine Avenue, Chicago 9, Illinois, Attorney for Armour and Company, Intervening Plaintiff-Appellant; Arthur C. O'Meara, John P. Staley, 4115 S. Packers Avenue, Chicago 9, Illinois, Attorneys for Swift & Company, Intervening Plaintiff-Appellant.

[fols. 195-231] In the United States District Court in and for the District of Utah, Central Division

[Title omitted]

Order Allowing Appeal—May 7, 1954

In the above entitled cause, Utah Poultry & Farmers Cooperative, plaintiff, and Armour and Company and Swift & Company, intervening plaintiffs therein, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final order and decree of this court entered March 10, 1954, and having also made and filed an assignment of errors and a statement of jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided:

It Is Ordered and Decreed, that the appeal be and the same is hereby allowed as prayed for.

It Is Further Ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of Five Hundred Dollars ($500.00), with good and sufficient surety, and shall be conditioned as may be required by law.

It Is Further Ordered that citation shall issue in accordance with law.

Dated May 7th, 1954.

(S.) Willis W. Ritter, United States District Judge.

[File endorsement omitted.]

[fol. 232] IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ASSIGNMENT OF ERRORS—Filed May 7, 1954

Now come Utah Poultry & Farmers Cooperative, plaintiff in the above entitled cause, and Armour and Company and Swift & Company, intervening plaintiffs in said cause, and in connection with their appeal herein, file the following Assignment of Errors upon which they will rely in their prosecution of said appeal to the Supreme Court of the United States from the final order and decree of the district court dated March 10, 1954.

The district court erred:

1. In holding that, "Judgment will be entered for the defendants * * *."

2. In failing to enjoin, suspend, annul and set aside the order of the Interstate Commerce Commission decided February 4, 1952, in which the Commission ordered discontinuance of the investigation in I. C. C. Docket No. 30030, *Special Regulations, Eggs*, and required the cancellation of tariff schedules suspended in the Commission's Investigation and Suspension Docket No. 5792, without prejudice to the filing of new schedules in conformity with the findings of the Commission in its report in *Special Regulations, Eggs*, 284 I. C. C. 377.

3. In holding and concluding that the Commission's findings of fact are supported by substantial evidence.

4. In holding and concluding that the tariff in this case [fol. 233] which publishes the "tolerance rules" is not a limitation of liability, and is no more than a factual determination of damage to eggs which is not caused by the carrier.

5. In holding and concluding that the tariff regulation involved herein constitutes a part of the whole problem of the rate structure, which requires the expert experience and judgment of the Commission.

6. In holding and concluding that the regulation here involved is fair and reasonable.

7. In holding and concluding that the court is bound

by the Commission's finding of fact that the "tolerances" do not include damage caused by the carriers.

8. In holding and concluding that the "damaged tolerance" rules approved by the Commission do not limit the carriers' liability in violation of Sec. 20(11) of the Interstate Commerce Act.

9. In holding and concluding, in effect, that the phrase "caused by it" in Sec. 20(11) of the Act changes the common law liability of a carrier so as to require proof of actual negligence.

10. In holding, by inference at least, that the rules governing filing and collection of egg claims endangered the efficient operation of railroads or the maintenance of an adequate national transportation system.

11. In finding, in effect, that the railroads were taking "losses" and that the egg-claim payments are uneconomic to the point of being injurious to the national transportation system and to the public interest.

12. In holding that, in effect, the filing and collection of claims for damage to eggs was a means of obtaining involuntary rebates.

13. In speculating as to the effect of rate increases on egg shipments.

14. In holding that every crate of eggs contains damage arising from inherent defects in the eggs at the time of delivery to the carrier.

15. In holding that the Commission's action is within the [fol. 234] Congressional grant of authority.

16. In holding that the Commission's action does not limit carrier liability in violation of Sec. 20(11).

17. In holding that losses caused deliberately, willfully, maliciously, and intentionally by the carriers or their agents, or due to their negligence, or to accidents in transit, such as broken cases, damage to entire load, and the breakage of large numbers of eggs in a shipment, are not limited by these regulations.

18. In holding that the evidence supports findings made by the Commission as to what a minimum amount of damage is in every crate of eggs when it is delivered to the carrier.

19. In holding and concluding that the Commission's finding that the damage, within the limit of the 3 per

cent and 5 per cent tolerances, is not caused by the carriers is supported by the evidence.

20. In holding that, in spite of the "tolerance" rules, the courts will continue to have the power to protect shippers against willful, malicious, negligent or other damage to eggs caused by the carriers.

21. In holding, in effect, that the susceptibility of eggs to breakage by the application of force is an "inherent vice" within the common law exception to a carrier's liability for damage caused by the inherent vice of the property.

22. In holding that the administrative proceeding embraced a problem of "fair compensation for hauling eggs" and that such a problem was relevant to any issues before the court.

23. In holding that the Commission's decision in the present proceeding is supported by "settled administrative construction" of Sec. 20(11) of the Interstate Commerce Act.

24. In holding that the eleven members of the Commission are not within the venue of this court.

25. In holding that the question of lawfulness here involved relate only to the Commission orders and not to the tariff filed after the orders became effective, which would be a different proceeding before the Commission and the court.

[fols. 235-283-1-130] Wherefore, the plaintiff, Utah Poultry & Farmers Cooperative, and Armour and Company and Swift & Company, intervening plaintiffs, pray that the Final Order and Decree of the District Court be reversed, that judgment be entered suspending, enjoining, annulling, and setting aside the Commission's order, and directing said Commission to strike from its files the provisions of Supplement No. 17 to the Consolidated Freight Classification, and for such other relief as the court may deem fit and proper.

Dated May 7, 1954.

(S.) John H. Pratt, 905 American Security Building, Washington 5, D. C., Attorney for Utah Poultry & Farmers Cooperative, Plaintiff-Appellant; Paul E. Blanchard, 4301 S. Racine

Avenue, Chicago 9, Illinois, Attorney for Armour and Company, Intervening Plaintiff-Appellant; Arthur C. O'Meara, John P. Staley, 4115 S. Packers Avenue, Chicago 9, Illinois, Attorneys for Swift & Company, Intervening Plaintiff-Appellant.

[File endorsement omitted.]

[fols. 1-131] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

PETITION OF SECRETARY OF AGRICULTURE FOR APPEAL—Filed June 8, 1954

The Secretary of Agriculture of the United States, being an intervening plaintiff in this action and considering himself aggrieved by the final order, judgment, and decree of this Court entered on May 7, 1954, hereby petitions that an appeal be allowed to the Supreme Court of the United States from said final order, judgment, and decree, and from each and every part thereof; that a citation be issued according to law; and that, because of the great expense involved in preparing copies of the record which must be submitted to the Supreme Court, the original certified copies of proceedings before the Interstate Commerce Commission filed in evidence herein be transmitted to the Supreme Court; and that the material parts of the record, duly authenticated, be sent to the Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, (S.) Robert L. Farrington, Solicitor, Neil Brooks, Associate Solicitor, Donald A. Campbell, Attorneys for the Secretary of Agriculture.

Dated: June 3, 1954, Washington, D. C.

[fol. 132] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ORDER ALLOWING APPEAL—June 8, 1954

The Secretary of Agriculture of the United States having made and filed his petition for an appeal to the Supreme Court of the United States from the final judgment of this Court entered in this cause on May 7, 1954, and from each and every part thereof, and having presented and filed his assignment of errors and prayer for reversal and his statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, Therefore, It is hereby Ordered that said appeal be and the same is hereby allowed as prayed for.

It is further Ordered, pursuant to 28 U. S. C. 1952 ed. § 2408, that an appeal bond for costs is not required of the Secretary of Agriculture.

It is further Ordered that a citation shall issue in accordance with law, and that, within sixty days from this date, the Clerk of this Court shall transmit to the Clerk of the Supreme Court of the United States the original certified copies of proceedings before the Interstate Commerce Commission on file herein together with a duly authenti-
[fols. 133-185] cated transcript of the material parts of the record in this cause, as designated by praecipe or stipulation of the appellant Secretary of Agriculture and counsel herein.

Done and Ordered this 8th day of June, 1954.

(S.) Willis W. Ritter, U. S. Judge.

[File endorsement omitted.]

* * * * * * *

[fol. 186] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed June 8, 1954

The Secretary of Agriculture, intervening plaintiff in the above-entitled action, in connection with his appeal to the Supreme Court of the United States, hereby files the following assignment of errors upon which he will rely in prosecuting his appeal from the final order, judgment, and decree of the District Court entered on May 7, 1954.

The District Court erred:

1. In holding and concluding that the "damage tolerance" rules approved by the Commission do not limit the carriers' liability in violation of § 20(11) of the Interstate Commerce Act.

2. In holding and concluding that the phrase "caused by it" in § 20(11) of the Act changes the common law liability of a carrier so as to require proof of actual negligence.

3. In holding and concluding that the susceptibility of eggs to breakage by the application of force is an "inherent vice" within the common law exception to a carrier's liability for damage caused by the inherent vice of the property.

4. In holding and concluding that the Commission's order of February 4, 1952, approving damage tolerances as to shell eggs, is supported by adequate findings and substantial evidence on the record as a whole.

[fol. 187] 5. In holding and concluding that the administrative proceeding embraced a problem of "fair compensation for hauling eggs" and that such a problem was relevant to the issues before the Court.

6. In holding and concluding that "the economic stability of carriers and the maintenance of an adequate national system of railroads were substantially affected" by the damage claim payments made by the railroads.

7. In holding and concluding that the "problem of claims against railroads for damage to egg shipments constitutes

a part of the whole problem of the rate structure, which courts many times have held requires the experience and judgment of the Commission."

8. In holding and concluding that payment of damage claims "was uneconomic to the point of being injurious to the national railroad transportation system and to the public interest."

9. In holding and concluding that the acceptance by shippers of payment for the full actual loss, damage, or injury caused by carriers is, in effect, a "means of obtaining involuntary rebates."

10. In holding and concluding that the Commission made "exhaustive factual studies" and that such studies show "that generally some amount of damage was in the crates at the time they were delivered to the carrier."

11. In holding and concluding that "in every crate of eggs when it is delivered to the carrier" "there is a certain minimum amount of checked, cracked and broken eggs."

12. In holding and concluding that the Commission's decision in the present proceeding is supported by "settled administrative construction" of section 20(11) of the Interstate Commerce Act.

13. In holding and concluding that "[l]osses caused deliberately, wilfully, maliciously and intentionally by the carriers or their agents, or due to their negligence, or to accidents in transit, such as broken cases, damage to entire carload, and the breakage of large numbers of eggs in a shipment, are not limited by these regulations. They purport only to exempt the carrier from losses the carrier does not cause."

[fols. 188-190] 14. In holding and concluding that it "would appear most difficult to determine with accuracy the portions of such damage which exist at the time of delivery to carriers, occurs during transit, or results from shipper inspection at destination."

15. In failing to suspend, enjoin, annul, and set aside the order of the Commission issued on February 4, 1952, which order discontinued the investigation in *Special Regulations, Eggs*, and required the cancellation of the suspended tariff schedules without prejudice to the filing of new sched-

ules in conformity with the findings of the Commission in *Special Regulations, Eggs*, 284 I. C. C. 377.

Wherefore, the Secretary of Agriculture of the United States petitions that the final order, judgment, and decree of the District Court be reversed, that judgment be entered suspending, enjoining, annulling, and setting aside the order of the Commission, and for such other relief as the Court may deem proper.

Respectfully submitted, (S.) Robert L. Farrington, Solicitor, Neil Brooks, Associate Solicitor, Donald A. Campbell, Attorneys for the Secretary of Agriculture.

Dated: June 3, 1954, Washington, D. C.

[File endorsement omitted.]

* * * * * * *

[fol. 191] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

PETITION OF UTAH POULTRY FARMERS COOPERATIVE FOR APPEAL—Filed June 30, 1954

Utah Poultry & Farmers Cooperative, plaintiff in the above-entitled cause, and Armour and Company and Swift & Company, intervening plaintiffs therein, feeling themselves aggrieved by the final order and decree of the United States District Court in and for the District of Utah, Central Division, entered in said court on May 7, 1954, pray an appeal from said order and decree to the Supreme Court of the United States.

The particulars wherein said plaintiff and intervening plaintiffs consider the order and decree erroneous are set

forth in the assignment of errors accompanying this petition, to which reference is hereby made.

Said plaintiff and intervening plaintiffs pray that a transcript of the record, proceedings, and papers on which said order and decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States; and that because of the great expense involved in preparing copies of the record which must be submitted to the Supreme Court, the original certified copies of proceedings before the Interstate Commerce [fol. 192] Commission filed in evidence herein be transmitted to the Supreme Court in lieu of a copy thereof.

(S.) John H. Pratt, 905 American Security Building, Washington 5, D. C., Attorney for Utah Poultry & Farmers Cooperative Plaintiff-Appellant. Marcus Whiting, 4301 S. Racine Avenue, Chicago 9, Illinois, Attorney for Armour and Company, Intervening Plaintiff-Appellant. Arthur C. O'Meara, John P. Staley, 4115 S. Packers Avenue, Chicago 9, Illinois, Attorneys for Swift & Company, Intervening Plaintiff-Appellant.

Dated: June 30, 1954.

[fols. 193-261] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ORDER ALLOWING APPEAL—June 30, 1954

In the above-entitled cause, Utah Poultry & Farmers Cooperative, plaintiff, and Armour and Company and Swift & Company, intervening plaintiffs therein, having made and filed their petition praying for an appeal to the Supreme Court of the United States from the final order and decree of this court entered May 7, 1954, and having also made and filed an assignment of errors and a statement

of jurisdiction, and having in all respects conformed to the statutes and rules of court in such cases made and provided:

It Is Ordered and Decreed, that the appeal be and the same is hereby allowed as prayed for.

It Is Further Ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of Five Hundred Dollars ($500.00), with good and sufficient surety, and shall be conditioned as may be required by law.

It Is Further Ordered that citation shall issue in accordance with law.

(S.) Willis W. Ritter, United States District Judge.

Dated: June 30, 1954.

[fol. 262] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 30, 1954

Now come Utah Poultry & Farmers Cooperative, plaintiff in the above entitled cause, and Armour and Company and Swift & Company, intervening plaintiffs in said cause, and in connection with their appeal herein, file the following Assignment of Errors upon which they will rely in their prosecution of said appeal to the Supreme Court of the United States from the final order and decree of the district court dated May 7, 1954.

The district court erred:

1. In holding that, "Judgment will be entered for the defendants * * *."

2. In failing to enjoin, suspend, annul and set aside the order of the Interstate Commerce Commission decided February 4, 1952, in which the Commission ordered dis-

continuance of the investigation in I. C. C. Docket No. 30030, *Special Regulations, Eggs*, and required the cancellation of tariff schedules suspended in the Commission's Investigation and Suspension Docket No. 5792, without prejudice to the filing of new schedules in conformity with the findings of the Commission in its report in *Special Regulations, Eggs*, 284 I. C. C. 377.

3. In holding and concluding that the Commission's findings of fact are supported by substantial evidence.

[fol. 263] 4. In holding and concluding that the tariff in this case which publishes the "tolerance rules" is not a limitation of liability, and is no more than a factual determination of damage to eggs which is not caused by the carrier.

5. In holding and concluding that the tariff regulation involved herein constitutes a part of the whole problem of the rate structure, which requires the expert experience and judgment of the Commission.

6. In holding and concluding that the regulation here involved is fair and reasonable.

7. In holding and concluding that the court is bound by the Commission's finding of fact that the "tolerances" do not includes damage caused by the carriers.

8. In holding and concluding that the "damaged tolerance" rules approved by the Commission do not limit the carriers' liability in violation of Sec. 20(11) of the Interstate Commerce Act.

9. In holding and concluding, in effect, that the phrase "caused by it" in Sec. 20(11) of the Act changes the common law liability of a carrier so as to require proof of actual negligence.

10. In holding, by inference at least, that the rules governing filing and collection of egg claims endangered the efficient operation of railroads or the maintenance of an adequate national transportation system.

11. In finding, in effect, that the railroads were taking "losses" and that the egg-claim payments are uneconomical to the point of being injurious to the national transportation system and to the public interest.

[fol. 264] 12. In holding that, in effect, the filing and

collection of claims for damage to eggs was a means of obtaining involuntary rebates.

13. In speculating as to the effect of rate increases on egg shipments.

14. In holding that every crate of eggs contains damage arising from inherent defects in the eggs at the time of delivery to the carrier.

15. In holding that the Commission's action is within the Congressional grant of authority.

16. In holding that the Commission's action does not limit carrier liability in violation of Sec. 20(11).

17. In holding that losses caused deliberately, willfully, maliciously, and intentionally by the carriers or their agents or due to their negligence, or to accidents in transit, such as broken cases, damage to entire load, and the breakage of large numbers of eggs in a shipment, are not limited by these regulations.

18. In holding that the evidence supports findings made by the Commission as to what a minimum amount of damage is in every crate of eggs when it is delivered to the carrier.

19. In holding and concluding that the Commission's finding that the damage, within the limit of the 3 per cent and 5 per cent tolerances, is not caused by the carriers is supported by the evidence.

20. In holding that, in spite of the "tolerance" rules, the courts will continue to have the power to protect shippers against willful, malicious, negligent or other damage to eggs caused by the carriers.

[fol. 265] 21. In holding, in effect, that the susceptibility of eggs to breakage by the application of force is an "inherent vice" within the common law exception to a carrier's liability for damage caused by the inherent vice of the property.

22. In holding that the administrative proceeding embraced a problem of "fair compensation for hauling eggs" and that such a problem was relevant to any issues before the court.

23. In holding that the Commission's decision in the present proceeding is supported by "settled administrative construction" of Sec. 20(11) of the Interstate Commerce Act.

24. In holding that the eleven members of the Commission are not within the venue of this court.

25. In holding that the questions of lawfulness here involved relate only to the Commission orders and not to the tariff filed after the orders became effective, which would be a different proceeding before the Commission and the court.

26. In finding that the tolerance provisions do not attempt to limit carrier liability for loss or damage caused by the railroads.

27. In finding that the tolerance provisions are directed against loss resulting from the physical condition of the eggs at the time they are offered for rail transportation.

28. In finding that the tolerance provisions provide a reasonable and nondiscriminatory means by which to limit the amount of damage existing at the time shipments are received by carriers for transportation, and the amount of damage resulting solely during transportation because of the inherent nature of the shipments.

[fol. 266] 29. In finding that the provisions merely constitute reasonable tariff rules and practices designed to protect the railroads against loss for damages which are not attributable to the railroads, but which result from the inherent nature of shell eggs.

30. In finding that such tolerance rules have been in effect for more than 37 years, and with the approval of the Commission for more than 34 years without challenge in the courts, but in failing to point out that prior to institution of the proceedings involved herein, such rules applied only to shipments of current receipts or "run-of-the-nest" eggs, which were practically never shipped; and in failing to point out that similar tolerance rules were condemned by the Commission in *National Poultry, Butter & Egg Asso.* v. *N. Y. C. Ry. Co.*, 52 I. C. C. 47, January 21, 1919, as to shell eggs other than current receipts.

31. In concluding that the orders of the Commission are not beyond its statutory powers in any respect, are not arbitrary, and are not based on findings or conclusions which are erroneous in any respect.

32. In concluding that the Commission's findings are adequate to support its order.

33. In concluding that the report and orders of the Commission are supported by substantial and probative evidence.

Wherefore, the plaintiff, Utah Poultry & Farmers Cooperative, and Armour and Company and Swift & Company, intervening plaintiffs, pray that the Final Order and Decree of the District Court be reversed; that judgment be entered suspending, enjoining, annulling, and setting aside the Commission's order, and directing said Commission to strike from its files the provisions of Supplement No. [fols. 267-315] 17 to the Consolidated Freight Classification, and for such other relief as the court may deem fit and proper.

(S.) John H. Pratt, 905 American Security Building, Washington 5, D. C., Attorney for Utah Poultry & Farmers Cooperative, Plaintiff-Appellant. Marcus Whiting, 4301 S. Racine Avenue, Chicago 9, Illinois, Attorney for Armour and Company, Intervening Plaintiff-Appellant. Arthur C. O'Méara, John P. Staley, 4115 S. Packers Avenue, Chicago 9, Illinois, Attorneys for Swift & Company, Intervening Plaintiff-Appellant.

Dated: June 30, 1954.

* * * * * * *

[fol. 1]

Proceedings Before the Interstate Commerce Commission

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 30030

In the Matter of Special Regulations—EGGS

Room 702, U. S. Customs House,
610 South Canal Street,
Chicago, Illinois,
Tuesday, July 26, 1949.

Met pursuant to notice at 9:30 o'clock a.m.

Before: R. F. Mitchell, Commissioner, presiding; F. E. Mullen, Examiner.

APPEARANCES:

Alfred S. Knowlton, 1 Park Avenue, New York 16, New York, for Official Territory respondents. William F. Zearfaus, 1740 Broad Street Station Building, Philadelphia, Pennsylvania, for Official Territory respondents. William F. Zinger, 1740 Broad Street Station Building, Philadelphia 4, Pennsylvania, for Official Territory respondents. James P. Canny, 1336 Midland Building, Cleveland 5, Ohio, for Official Territory respondents, J. Edgar McDonald, 466 Lexington Avenue, New York 17, New York, for Official Territory respondents, John F. Reilly, 140 Cedar Street, [fol. 2] New York 6, New York, for Official Territory respondents, John R. Wall, 301 B&O Building, Baltimore 1, Maryland, for Official Territory respondents, G. H. Durvas, Chairman, Western Classification Commission, Room 202, Union Station, Chicago 6, Illinois, C. H. Johns, appearing for Bureau of Inquiry, Interstate Commerce Commission, Walter D. Matson, Office of the Solicitor, United States Department of Agriculture, Washington 25, D. C., Leon Schilt, Transportation Rates and Services Division, United States Department of Agriculture, Washington, D. C., Raymond Krebill, Office of the Judge Advocate

General, Washington, D. C., representing the Departments of the Army and Air Force, John P. Staley, 4114 South Packers Avenue, Chicago, Illinois, appearing for Swift and Company, Paul E. Blanchard, 43d and Racine Avenue, Chicago, Illinois, Law Department, appearing for Armour and Company, James Kenney, 4100 South Ashland Avenue, Chicago, Illinois, appearing for Wilson and Company, Harrison F. Jones, Room 913, 110 North Franklin Street, Chicago 6, Illinois, appearing for the National Poultry, Butter and Egg Association, W. M. Tuohy, 110 North Franklin Street, [fols. 3-4] Chicago 6, Illinois, appearing for National Poultry, Butter and Egg Association, Robert H. Smith, 212 Medical Arts Building, Duluth, Minnesota, appearing for the Duluth Chamber of Commerce and the Northwest Dairy Forwarding Company, Donald A. Morken, 1100 1st National Soo Line Building, Minneapolis, Minnesota, appearing for Midwest Dairy Despatch, Inc., Willard K. Brown, 6 Harrison Street, New York 13, New York, appearing for New York Mercantile Exchange, Lloyd C. Dell, 12th and Jones Streets, Omaha, Nebraska, appearing for Fairmont Foods Company.

[fol. 5] PROCEEDINGS

Commr. Mitchell: The hearing will come to order.

This hearing is in compliance with the order of the I. C. C. Division 2, entered on the 23d day of July, 1948, in Case No. 30030, Special Regulations—Eggs, in which the division on behalf of the Commission ordered that an investigation be and is hereby instituted by the said division upon its own motion into and concerning the reasonableness and otherwise lawfulness of the regulations described in the next preceding paragraph hereof with a view to making such findings in the premises and prescribe such just, reasonable and otherwise lawful rules and regulations and practices as the facts and circumstances show and appear to warrant.

"It is further ordered that all common carriers of property by railroad, parties to the said schedules, be and they are hereby respondents to this proceeding, that a copy of

this order be served upon each of the respondents and that notice to the public be given by posting a copy of this order to the office of the secretary of the Commission.

"It is further ordered that this proceeding be and the same is hereby assigned for hearing July 26, 1949, before Examiner Mullen and Commissioner Mitchell."

At this time we will enter the appearances for the parties.

Mr. Knowlton: Alfred S. Knowlton, 1 Park Avenue, New York 16, New York, for Official Territory, respondents. [fol. 6] There are other attorneys who are also appearing for those respondents and I will ask that they give their names.

Commr. Mitchell: You are a practitioner, Mr. Knowlton?

Mr. Knowlton: Yes, I am, and so are the others.

Mr. Zearfaus: William F. Zearfaus, 1740 Broad Street Station Building, Philadelphia, Pennsylvania, appearing for Official Territory respondents.

Mr. Zinger: William F. Zinger, 1840 Broad Street Station Building, Philadelphia 4, Pennsylvania, appearing for Official Classification respondents.

Mr. Canny: James P. Canny, 1336 Midland Building, Cleveland 5, Ohio, Official Territory respondents. I have been admitted to practice.

Mr. McDonald: J. Edgar McDonald, 466 Lexington Avenue, New York 17, New York, appearing on behalf of Official Territory respondents.

Mr. Reilly: John F. Reilly, 140 Cedar Street, New York 6, New York, appearing for Official Territory respondents.

Mr. Wall: John R. Wall, 301 B&O Building, Baltimore 1, Maryland, appearing for Official Territory respondents.

Commr. Mitchell: Is there any one else who appears for the respondents?

(No response)

Commr. Mitchell: Who appears for the Commission?

Mr. Johns: C. H. Johns, attorney with the Bureau of Inquiry,

[fol. 7] Interstate Commerce Commission, appearing for the Bureau of Inquiry.

Commr. Mitchell: Are there any other parties that would like to enter their appearances at this time?

Mr. Matson: Representing the Secretary of Agriculture of the United States, Walter D. Matson, Office of the Solicitor, United States Department of Agriculture, Washington 25, D. C., and Leon Schilt, Transportation Rates and Services Division, United States Department of Agriculture, Washington, D. C.

Exam. Mullen: Is Mr. Schilt present?

Mr. Matson: Not yet.

Mr. Krebill: Representing the Departments of the Army and the Air Force, Raymond Krebill, Office of the Judge Advocate General, Washington, D. C.

Commr. Mitchell: Does anyone else desire to enter their appearance at this time?

Mr. Staley: John P. Staley, Swift and Company, 4114 South Packers Avenue, Chicago, Illinois. I have been admitted to practice before the Commission.

Mr. Blanchard: Paul E. Blanchard, 43d and Racine Avenue, Chicago 9, Illinois, Law Department, Armour and Company, appearing for Armour and Company. I am a Class A practitioner.

Mr. Simpson: Louis R. Simpson, 4100 South Ashland Avenue, Chicago, Illinois, appearing for Wilson and Company. I am a registered practitioner.

[fol. 8] Mr. Jones: Harrison F. Jones, Room 913, 110 North Franklin Street, Chicago 6, Illinois, appearing for the National Poultry, Butter and Egg Association.

Mr. Smith: Robert H. Smith, 212 Medical Arts Building, Duluth, Minnesota, appearing for the Duluth Chamber of Commerce and the Northwest Dairy Forwarding Company. I have been admitted to practice.

Mr. Morken: Donald A. Morken, 1100 1st National Soo Line Building, Minneapolis, Minnesota. I am a lawyer and practitioner appearing on behalf of Midwest Dairy Despatch, Inc.

Exam. Mullen: I didn't get that.

Mr. Morken: Midwest Dairy Despatch, Inc., Minneapolis, Minnesota.

Mr. Brown: Willard K. Brown, 6 Harrison Street, New York 13, New York, appearing for the New York Mercantile Exchange.

Commr. Mitchell: Is there any one else that desires to enter their appearance at this time?

Those that have entered their appearances will sign the appearance slips and file them with the reporter, please. Do that at any time.

Before we proceed I have received a telegram here which I will read into the record.

"Commissioner R. F. Mitchell—Examiner F. E. Mullen, I. C. Commission, Room 705 U. S. Customs Building, 610 South Canal Street, Chicago.

[fol. 9] "Poultry producers of Central California representing 10,000 member producers shipping million and half cases of eggs yearly respectfully request you record our complete opposition to carriers' proposal Docket No. 30030 as being unjust and unreasonable denial of carriers' responsibility under common commandment, as subsequently upheld in decision United States Supreme Court, and likewise repugnant to the 14th Amendment. (Signed) E. K. Slusser, Traffic Manager, Poultry Producers of Central California, 840 Battery Street, San Francisco, California."

Mr. Knowlton: I will object to that going into the record, Mr. Commissioner.

Commr. Mitchell: What is the basis of your objection?

Mr. Knowlton: First, he does not state that their eggs move regularly; secondly, they talk about a carriers' proposal. We have no proposal. How do they know what our proposal will be?

Commr. Mitchell: Let's not argue. State your objection. Don't argue your case.

Any other objections?

Mr. Knowlton: Yes; the witnesses are not here for cross examination.

Commr. Mitchell: The objection is overruled. It will be admitted.

You may proceed, Mr. Johns.

Mr. Johns: Mr. Commissioner, we have passed out the [fol. 10] statement of Mr. Murphy and exhibits, and if there is any one who did not get a copy, we have copies here.

Before we begin, Mr. Commissioner, I would like to state that the exhibits to Mr. Murphy's statement are attached to the back of the statement in such a manner that by pulling them you will have two separate documents, one a group of exhibits and one, the statement, and before he starts I would like to have these exhibits assigned numbers, if you please, sir.

The exhibit entitled "Comparison of Shell Egg Shipments Received by Rail at New York, N. Y. with Loss and Damage Claims thereon," I would like to have marked as Exhibit No. 1.

(Commission's Exhibit No. 1, Witness Murphy, marked for identification.)

OFFERS IN EVIDENCE

The document entitled, "Comparison of Shell Egg Shipments Received by Rail at New York, N. Y., During 1947 With Loss and Damage Claims Thereon," I ask to have marked Exhibit 2.

(Commission's Exhibit No. 2, Witness Murphy, marked for identification.)

Commr. Mitchell: What was your Exhibit No. 1, Mr. Johns?

Mr. Johns: Exhibit 1 was "Comparison of Shell Egg Shipments Received by Rail at New York, N. Y. with Loss and Damage Claims Thereon."

Commr. Mitchell: All right.

Mr. Johns: I ask to have marked as Exhibit 3 the document entitled——

[fol. 11] Exam. Mullen: Just a moment. What was Exhibit 2?

Mr. Johns: Exhibit 2 is a comparison of shell egg shipments during 1947.

Now, we would like to have the document entitled, "Com-

parison of Shell Egg Shipments Received by Rail at New York, N. Y. During 1948 with Loss and Damage Claims Thereon," marked as Exhibit No. 3.

(Commission's Exhibit No. 3, Witness Murphy, marked for identification.)

The next document entitled "Comparison of Shell Egg Shipments Received by Rail at New York, N. Y. During First 4 months of 1949 with Loss and Damage Claims Thereon," I would like to have marked as Exhibit No. 4.

(Commission's Exhibit No. 4, Witness Murphy, marked for identification.)

The next document entitled, "Comparison of Shell Egg Shipments Received by Rail at New York, N. Y. with Loss and Damage Claims Thereon for First 4 months of 1947-1948-1949," I would like to have marked as Exhibit No. 5.

(Commission's Exhibit No. 5, Witness Murphy, marked for identification.)

The next document entitled, "Circular No. FCD-1342 Association of American Railroads," We ask to have marked Exhibit No. 6.

(Commission's Exhibit No. 6, Witness Murphy, marked for identification.)

[fol. 12] The next document entitled, "Comparison of (1947) National Rail Revenue and Claim Statistics of Shell Eggs with Those of New York, N. Y.," I ask to have marked as Exhibit No. 7.

(Commission's Exhibit No. 7, Witness Murphy, marked for identification.)

The next document entitled, "Shell Egg Loss and Damage Claim Payments Approved by the Railroad Perishable Inspection Agency in 1947-1948," I ask to have marked as Exhibit No. 8.

(Commission's Exhibit No. 8, Witness Murphy, marked for identification.)

And the last document entitled, "Shell Eggs Received at New York, N. Y. by Railroad and Truck," I ask to have marked as Exhibit No. 9.

(Commission's Exhibit No. 9, Witness Murphy, marked for identification.)

Commr. Mitchell: All right. Proceed, Mr. Johns.

EDWARD L. MURPHY was sworn and testified as follows:

DIRECT EXAMINATION:

By Mr. Johns:

Q. Will you state your name?

A. Edward L. Murphy, special agent, Bureau of Inquiry, Interstate Commerce Commission, Washington, D. C.

Q. Mr. Murphy, have you made an investigation into the subject matter of this inquiry?

A. Yes, I did.

[fol. 13] Q. Have you prepared a statement of what you found during your investigation?

A. Yes, I have.

Q. Will you read that statement?

A. During the latter part of January—

Commr. Mitchell: You will have to read a little louder, Mr. Murphy, on account of the fans.

The Witness: During the latter part of January and the early part of February, 1948, I made an investigation at New York City into the matter of loss and damage claim payments by the New York Harbor lines for shipments of shell eggs delivered at New York by rail.

The investigation included conferences with the freight claim agents of the several New York Harbor lines and representatives of the Railroad Perishable Inspection Agency.

At the offices of the RPIA I examined approximately seventy-five typical egg claims then in the process of adjustment as well as other records pertaining to the inspec-

tion of egg shipments and the payment of damage claims therefor.

I also witnessed the inspection and repacking of a number of damaged egg shipments at the Erie Railroad's Pier 20, North River, New York City.

Subsequent additional investigations of this subject were made during April and May, 1949.

The RPIA is an official agency of the eastern railroads. [fol. 14] Its principal function is to inspect and certify the loss and damage to rail shipments of perishable freight including fresh fruits and vegetables, meats, dairy products, eggs, et cetera. It maintains inspectors at the principal rail delivery points and issues detailed reports of loss and damage. Those reports are relied upon by the railroads in the settlement of such claims and with respect to certain commodities, including eggs, the claims themselves are referred to the RPIA for recommendation of settlement.

My investigation disclosed that since 1940, which was the earliest period for which statistics were available, the claim payments for loss and damage to rail shipments of shell eggs delivered at New York have increased enormously. For example, while the volume of shell egg traffic delivered at New York by rail in 1947 was approximately the same as in 1940, the amount of claim payments rose from about $72,000 in 1940 to approximately $1,500,000 in 1947—an increase of 2,000 per cent. I have prepared exhibits dealing with the claim payments during that period.

The first exhibit, marked Exhibit No. 1, is a tabulation showing the number of cases of shell eggs received by rail at New York for the period from January, 1940, to April, 1949, inclusive with the estimated car equivalents. Shown also in comparison for the same period are the number and amount of loss and damage claims.

[fol. 15] It will be observed that in 1940, 4,552,143 cases of shell eggs were received by rail at New York, which resulted in 2,116 loss and damage claims aggregating $71,652.

In 1947, 4,568,309 cases were received by rail at New York which resulted in 6,911 claims totalling $1,505,472.

In other words, practically the same volume of rail traffic in 1947 resulted in an increase in claim payments of $1,433,820 over 1940.

Taking 1940 figures as the 100 per cent index for comparison purposes, it will be noted that the increase in the number and amount of claims has been entirely disproportionate to the volume of traffic.

For example, in 1944 the volume of traffic dropped to approximately 83 per cent of 1940, but the amount of claims increased to approximately 664 per cent.

In 1946 the volume of traffic was 121 per cent of 1940 but the amount of claims was over 2,200 per cent.

In 1947 the volume of traffic was less than half of one per cent over 1940 but the amount of claims was 2,100 per cent.

It will be seen also that while the amount of the 1947 claims was 2,100 per cent of the 1940 claims, the number of claims received was only 326 per cent, which indicates that the dollar amount of the individual claims had swollen enormously.

In 1948, the volume of traffic dropped to about 77 per cent of 1940, and while the amount of the claims dropped also, the 1948 payments were still 1,352 per cent of the 1940 [fol. 16] payments.

As this exhibit shows, the average claim payment per car handled in 1940 was $9.44; in 1942, $18.87; in 1944, $75.78; in 1946, $171.48; in 1948, $166.30, and for the first four months of 1949, $191.79.

The average amount per claim rose from $33.86 in 1940 to $42.89 in 1942, to $121.75 in 1944, to $191.07 in 1946, to $230.49 in 1948, but for the first four months of 1949 it dropped to $208.22.

Exhibit No. 2 is a comparison of the monthly rail egg receipts at New York for the year 1947 and the estimated car equivalents with the number and amount of loss and damage claims thereon. It will be observed that the 7,616 cars of eggs resulted in 6,911 claims; in other words, claims were paid on approximately nine out of every ten cars.

Exhibit No. 3 is a similar comparison for 1948 which indicates that the 5,830 cars received resulted in 4,205 claims or approximately seven claims out of every ten cars.

Exhibit No. 4 is a similar comparison for the first four months of 1949, which is the latest period for which sta

tistics were available. During this period approximately 1,001 cars were received which resulted in 922 claims or approximately nine claims out of every ten cars.

Ordinarily from four to five months elapse between the delivery of a car of eggs at New York and the payment of a claim thereon. It is believed therefore that the new egg [fol. 17] inspection rules which became effective July 24, 1948, are fully reflected in the statistics for the first four months of 1949.

Exhibit No. 5 is a comparison of the rail receipts and claim payments for the first four months of 1947, 1948 and 1949, which also shows the average amount of claim payments per car handled and per claim.

It will be observed that the average amount of loss and damage payments per car handled at New York was $144.17 in 1947; $155.00 in 1948, and $191.79 in 1949, while the average amount per claim was $206.01 in 1947; $228.94 in 1948 and $208.22 in 1949.

Those figures indicate that despite the effect of the new inspection rules, the claims at New York continue their upward climb.

Exhibit No. 6 is a copy of Circular No. FCD-1342 dated July 23, 1948, of the Association of American Railroads, Freight Claim Division, showing comparative loss and damage, carloading, and revenue statistics for the various commodity categories handled in freight service by Class 1 rail carriers during 1947.

Attention is directed to the fact that loss and damage claims on shell eggs, Item No. 12, were substantially greater than on any other commodity listed with an average amount of loss and damage per car of shell eggs handled of $83.72, or the equivalent of $21.20 out of every hundred [fol. 18] dollars of railroad revenue received for the transportation.

Exhibit No. 7 is a statement for the year 1947 of cars of shell eggs originated, freight revenue, average revenue per car, total loss and damage payments, per car claim payments, and the amount of loss and damage payments per $100,000 of rail revenue for the nation as a whole on the one hand, and comparative figures for New York, on the other hand.

It will be observed that while New York received approximately 28 per cent of all shell eggs originated by rail, the New York egg claims amounted to 67 per cent of the national egg claim payments.

It will also be observed that while the national egg claim payments averaged $83.72 per car, the New York average was $197.67 per car, and further that while nationally the egg claim payments amounted to $21.20 per $100 of rail revenue, the New York figure was $50.04, or about two and one-half times as much.

Exhibit No. 8 is a statement of shell egg loss and damage claims approved by the Railroad Perishable Inspection Agency in 1947 and 1948 for cities in its territory, including New York.

It will be observed that in 1947 at the cities listed 8,004 egg claims were approved, aggregating $1,677,473.73, of which New York accounted for 6,911 claims—86.3 per cent—amounting to $1,505,472.63—90 per cent.

[fol. 19] In 1948 a total of 5,086 claims aggregating $1,057,688.58 were paid in all districts of which New York accounted for 4,205 claims—82.6 per cent—totaling $969,211.43—91.6 per cent.

No statistics of the volume of rail egg traffic to any of the cities listed except Philadelphia, Pennsylvania, were available.

According to U. S. Department of Agriculture Dairy & Poultry Market Statistics, 491,632 cases of shell eggs or approximately 819 cars were received by rail at Philadelphia in 1947.

As this exhibit will indicate, Philadelphia in 1947 had only 391 claims aggregating $34,333.17 or approximately $41.92 per car.

As previously stated, in the same period the per car claim average at New York was $197.67.

In 1948, Philadelphia received by rail 447,544 cases of eggs or approximately 746 cars but had only 128 claims aggregating $29,792.02 or approximately $40.00 per car handled as compared to $166.30 per car handled at New York in the same period.

At the time of my initial investigation, the inspection of eggs at New York was governed by the rules contained in

Items Nos. 14555 to 14602, inclusive of Consolidated Freight Classification No. 17, I. C. C. No. OC-61.

Briefly stated those rules provide that upon arrival at [fol. 20] destination, the consignee shall have the privilege, before the eggs leave the possession of the carrier and under the supervision of the carrier's representative, of lifting the lids of twenty cases in any carload and examining the top layer thereof for the purpose of ascertaining whether such cases contained damaged eggs.

If such examination shows no evidence of damage, it shall be considered complete and final for the entire shipment and a good order receipt shall be required of consignee.

If such examination, however, discloses damage, consignee shall have the right to make further examination of the shipment and set aside all cases containing damaged eggs.

Joint examination of all such cases set aside shall be conducted by representatives of carrier and consignee, and the extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by the joint inspectors.

When the extent of the damage has been ascertained by such joint inspection, the RPIA inspector gives the consignee a damage report itemizing the number of dozens of eggs which are broken, stained, leaking or cracked.

The classification rules further provide that the damaged cases may be repacked by the consignee at the expense of the carrier. The repacking of the damaged cases by the consignee usually takes place at the railroad pier or warehouse where the eggs are delivered, but occasion- [fol. 21] ally it is performed at the consignee's place of business.

In repacking, the consignee's representative examines every egg in the set-aside cases. Stained, leaking or cracked eggs are removed and repacked into other cases each containing damaged eggs of the same category in order to consolidate the damage. Completely damaged or "lost" eggs are replaced by good eggs.

In all such repacked cases new fillers and flats are furnished by the consignee. When the damage claim is filed

with the railroad by the consignee, it includes the full cost of labor and materials used in the repacking as well as the cost of the damage itself. Such rehandling and repacking expense is a major item of cost in the settlement of egg claims.

Since the inspection rule provides that if the examination of the top layers of the twenty selected cases discloses damage, without qualifying the minimum allowable extent of the disclosed damage, a single broken or cracked egg qualifies the consignee to make a thorough examination of all the remaining cases in the shipment.

If the consignee finds any damage in the remaining cases, he is permitted to demand a joint inspection of the damaged cases. Every damaged egg is then tallied and recorded by the RPIA inspector, and a detailed damage report is given to the consignee for all damage found.

[fol. 22] The consignee is then free to repack all of the damaged cases and consolidate the damage in the manner previously described.

The RPIA damage report is in effect an admission of damage by the railroad and usually it is all that is required to establish railroad liability.

I am informed that with rare exceptions eggs are not examined for concealed damage by the railroad at point of origin and a clear bill of lading is given to the shipper. Upon arrival at destination, all damage found by the RPIA inspection is presumed to have occurred in transit and as a practical matter the RPIA inspection report is almost the equivalent of a draft against the carrier since a claim supported by it is as good as collected.

Under this method of settling claims, the railroads are obliged to pay for all damage to the eggs found at destination even where there were damaged eggs in the shipment at the time it was presented to the railroad at point of origin.

Section 6 of Note 4 contained in Item 14586 of the egg inspection rules in effect at the time of my investigation provided, in substance, that all eggs, except storage packed eggs and rehandled and repacked eggs, shall be subject to a 5 per cent tolerance. In other words, where the damage to a carload shipment of such eggs was 5 per cent or less,

no claim was allowed. If the damage exceeded 5 per cent, only the damage in excess of 5 per cent was allowed.

[fol. 23] The 5 per cent tolerance rule had its origin in National Poultry, Butter & Egg Association v. N.Y.C.R.R. Co., 52 I. C. C. 47, which dealt with the inspection rules and damage to shipments of shell eggs by rail. In that case the Commission distinguished between current receipts or country eggs on the one hand, and eggs that were rehandled and repacked to remove the damage, on the other hand, and authorized the carriers to apply the 5 per cent tolerance rule to all eggs except those from which the damaged eggs were removed in repacking.

The decision failed, however, to state the point at which the rehandling and repacking must be performed.

During my examination of the before-mentioned seventy-five typical egg claims then in the process of adjustment at the offices of the RPIA at New York City, I observed that in no instance was the 5 per cent tolerance rule applied by the carriers. In most instances the bills of lading contained a certificate by the shipper to the effect that the eggs were rehandled and repacked in accordance with the tariff, and in the remaining instances the shipper or consignee so certified to the carrier after the claim was filed.

I was informed by Manager Jensen of the RPIA and others in his organization, that since the Commission in that decision did not explicitly state that the rehandling and repacking must be done at the point of rail shipment, the egg receivers at New York insisted that the term "re-[fol. 24] handled and repacked" applied even to eggs packed at country points and subsequently trucked long distances over the road to the railhead where the cars were loaded.

A dispute on this point between the railroads and the egg trade continued for several years and finally culminated in a meeting held at New York City on October 10, 1945, when the Eastern Claim Conference of the carriers adopted the following resolution:

"The term rehandled and repacked shall apply only to eggs that have actually been rehandled and repacked at the point of origin of the rail shipment in relation to which the claim arises and within a reasonable time prior to that shipment having been made. Under all other conditions,

such shipments will be considered to be other than rehandled and repacked and claims will be settled only under the 5 per cent tolerance rule."

The egg trade, aided by representatives of the U. S. Department of Agriculture, protested the resolution and appealed the matter to the Traffic Executive Association-Eastern Territory.

After hearings at Chicago, Illinois, at which the egg trade was heard, the T. E. A. on April 30, 1946, rescinded the Eastern Claim Conference resolution and, by the following minute, restored the status quo:

* * * "In the light of the situation as presented, it was recommended that the interpretation in question, on which [fol. 25] the freight claim agents had acted on and after October 11, 1945, be withdrawn. It was understood that claims pending on or after that date would be handled on their individual merits. * * *"

As a result of that reversal, thousands of egg damage claims which were affected by the claim conference resolution and which were held up pending settlement of the controversy were ordered paid in full without recourse to the tolerance rule.

The immediate effect of the reversal was a tremendous increase in the egg claim payments.

As the matter stood at the time of my initial investigation, the egg trade and the railroads recognized as "rehandled and repacked" eggs which were packed at the farms and country points irrespective of where the packing or repacking was performed, and whether or not the eggs subsequently were trucked long distances to the rail shipping point.

In other words, the railroads at New York were paying not only for the damage which occurred in rail transportation but also for the damage that normally occurs to eggs during the truck haul from the point at which packed to the point of rail shipment.

To illustrate the point, I noticed many damage claims covering carload shipments of eggs made from Iowa and Indiana points by exempt consolidators and freight for-

warders who specialize in the business of gathering eggs at country points, trucking them to railheads where numerous small lots from various shippers were consolidated [fol. 26] into carload units and shipped to truckmen at New York for distribution to a number of consignees.

Typical of the forwarders was Merrill M. Pregler doing business as Dairy Dispatch Company of Dubuque, Iowa. Damage claims on Mr. Pregler's shipments were said to be exceptionally heavy.

In Docket No. ICC MC-81459—Sub 1—a motor carrier application—Pregler described his operations in detail. He stated his trucks circulated throughout Iowa gathering eggs at country points and trucking them into Dubuque where consolidated cars were loaded for New York.

Mr. Pregler also stated that his trucks which gathered the eggs backed up to the door of the freight car and transferred the eggs direct from truck to car.

Accepting Pregler's description of his operation, it is obvious that the eggs were not rehandled and repacked at Dubuque so as to remove the damaged eggs at the time the car was loaded. Yet, invariably, the rail bills of lading prepared by Mr. Pregler stated that the eggs were rehandled and repacked in accordance with the tariff.

Subsequently, when the eggs arrived at New York in a damaged condition, claim was filed by the consignee for the full amount of the damage, and while the RPIA and the railroads at New York were well aware that the eggs were trucked into Dubuque from Iowa country points by Pregler and were not rehandled and repacked at Dubuque in order to remove the eggs damaged by the truck haul, [fol. 27] the railroads and the RPIA accepted Mr. Pregler's bill of lading certification and paid the claims without recourse to the 5 per cent tolerance rule.

I learned that in the fall of 1947——

Commr. Mitchell: One moment. When do you say these payments were made; in 1949, were they?

The Witness: What payments?

Commr. Mitchell: The Pregler payments in regard to the 5 per cent tolerance rule?

The Witness: Well, I discuss that a little further on in the statement.

Commr. Mitchell: All right.

The Witness: I learned that in the fall of 1947, the DL&W Railroad was handling the Pregler cars into New York. In November, 1947, it occurred to the Lackawanna's freight claim agent that the heavy damage claims on Pregler's consolidated cars ought to be pro-rated with Pregler since he performed part of the transportation up to Dubuque.

Accordingly, the Lackawanna prepared figures which showed that on the average Pregler's trucking operation from the country point to Dubuque represented approximately 15 per cent of the through haul from the country points to New York, and the Lackawanna refused to pay more than 85 per cent of the claims. That, of course, left the New York claimants with 15 per cent of the claims to collect from Pregler.

[fol. 28] Very shortly thereafter, I was informed the Lackawanna lost Mr. Pregler's traffic to New York City and thereafter it was routed via a competitive railroad.

In April of this year I was informed that from the date of the new tariff, July 24, 1948, until December 9, 1948, Mr. Pregler continued to use the "Rehandled and Repacked" notation on his bills of lading and that the origin carrier continued to accept them as billed.

In order to ascertain whether the notations by Pregler actually caused the eastern railroad to pay damage claims without invoking the tolerance rule, I made a short investigation at New York at the offices of the RPIA, the destination carrier, and E. W. Morche & Sons, the last being the local truckman-distributor, who is the consignee of Pregler's cars, and who files the damage claims.

Manager Jensen of the RPIA informed me that since he knew that Pregler did not rehandle and repack his eggs at Dubuque, he issued instructions to his claim clerks to invoke the tolerance rule irrespective of any notations that might appear on Pregler's bills of lading.

I obtained reference to thirty Pregler cars consigned to Morche which were shipped during that period, and then checked the RPIA claim records and established (1) the original amount for which the claims were filed, and (2) the amount of payment recommended by the RPIA. On every car checked, the RPIA had deducted the tolerance in de

[fol. 29] termining the amount of its recommendation despite the fact that Pregler had used the notations on the bills of lading.

Later I checked the RPIA recommendation figures against the records of both the destination carrier and Morche and found that the amount finally paid to Morche was the amount recommended by the RPIA which, as stated, took full advantage of the tolerance.

From these claims I observed that the application of the 5 per cent tolerance cuts anywhere from 35 to 40 per cent off the face value of the claim. For example, on car URT 34012 shipped July 26, 1948, a claim for $184.59 was filed by Morche for damage to 365 dozen of eggs contained in 102 cases. In this case the RPIA disregarded Pregler's certification and applied the tolerance in handling the claim. This was done by deducting 5 per cent or one and one-half dozen eggs per case for the 102 damaged cases, or a total of 153 dozens, which was deducted from the 365 dozens damaged. The railroad liability therefore was only 212 dozens and the claim was settled for 212/365 or 58.08 per cent or $107.21 which was the amount Morche finally received from the railroad.

By Mr. Johns:

Q. Mr. Murphy, going back to your Exhibit 6, did you attempt to obtain similar information for the year 1948?

A. Yes, I did. I called at the office of the Association of American Railroads, freight claim division, here at Chicago yesterday, and tried to get a comparable state-[fol. 30] ment for 1948, but I was informed that the statement hadn't been tabulated as yet. However, I did get the figures on eggs to correspond with Item 12 in my Exhibit No. 6, which I would like to read into the record.

This is freight loss and damage carloading and revenue, 1948, Item No. 12, eggs in shell, carload loss and damage, $1,933,060; number of cars originated, 21,424; freight revenue carload——

Commr. Mitchell: I didn't get that figure on number of cars.

The Witness: 21,424; freight revenue carload, $9,641,928;

loss and damage per car, $90.23; loss and damage per hundred dollars revenue, $20.05.

Those statistics will be published in a statement form similar to my Exhibit 6, but as I said they are not ready yet.

By Mr. Johns:

Q. Now, Mr. Murphy, will you turn to your Exhibit 9 and explain what that represents?

A. Exhibit 9 is a statement of shell eggs received at New York, New York, by railroad and truck for each month beginning with January, 1948, to April, 1949, inclusive, showing the total number of cases received by railroad and truck together with the total number of cases put into cold storage.

Q. When you were developing this information what were you trying to establish?

A. I just wanted to see how much of the eggs that were received went into cold storage.

[fol. 31] Commr. Mitchell: I didn't hear that answer.

The Witness: I just wanted to determine the extent of the movement of eggs into cold storage at New York.

By Mr. Johns:

Q. Was there any way that you could break these figures down showing the proportion of rail shipments going into cold storage?

A. No, there wasn't.

Q. You couldn't break those figures down?

A. No, I could not.

Mr. Johns: That is all we have, sir.

Commr. Mitchell: Was it your idea that this 5 per cent tolerance rule affected the number of eggs going into cold storage, is that right?

The Witness: I thought that was a possibility, yes.

Mr. Johns: That is all I have.

Commr. Mitchell: Cross examine.

Cross examination.

By Mr. Knowlton:

Q. Mr. Murphy, on your Exhibit 3 you state that it is believed that the new egg inspection rules which became effective June 24, 1948, are fully reflected in the statistics for the first four months of 1949. Would those statistics also include, or might they include any delayed claims?

A. Yes, indeed.

Q. They might then go back prior to the middle of 1948?

A. Yes, they could.

[fol. 32] Q. You haven't gone into that?

A. No, I haven't.

Q. On your Exhibit No. 4, are those cars which show the loss and damage claims thereon the same cars as were received during the four months of 1949, or is that merely a statement of the number of cars or number of cases received and the claims during that period?

A. That is correct.

Q. They don't tie up then?

A. No, they don't.

Exam. Mullen: Did you mention, Mr. Murphy, what the present rule is, when that new rule went into effect?

The Witness: Yes, I did: I mentioned about the effective date.

Exam. Mullen: What was the date?

The Witness: July 24, 1948.

Mr. Johns: It is on page 10 of his statement, Mr. Examiner, the last paragraph; just inferentially.

By Mr. Knowlton:

Q. Would your exhibit not be more accurate if we took out the word "thereon" in the title in light on the testimony you have just given?

A. What exhibit is that?

Q. Exhibit 4.

A. Yes, it probably would.

Q. How about Exhibit 3; would it be the same situation?

[fol. 33] A. The same thing, yes.

Q. You state that normally eggs are not examined for

concealed damage by the railroad at point of origin, and that a clear bill of lading is given to the shipper.

Can you suggest any practical way of overcoming that situation other than some stipulation as to what might be the normal expectancy?

A. No, I can't.

Q. If we had to delay every shipment to examine it we would probably lose the business, wouldn't we?

A. I dare say you would.

Commr. Mitchell: You might be better off without it, from these figures.

Mr. Knowlton: Well, Mr. Commissioner, we are trying to find a solution here that is practical so we won't lose the business.

Commr. Mitchell: You are awfully slow doing it.

Go ahead with your cross examination.

By Mr. Knowlton:

Q. The Commission as you stated set up the 5 per cent tolerance on current receipts. What would be your attitude as to a tolerance, say, of two per cent or whatever the figures justified on the repacked and rehandled, if you care to state it?

A. Well, I have no knowledge of what the correct tolerance should be.

[fol. 34] Q. Well, do you believe that a similar rule should be put in covering the correct tolerance?

A. I certainly do.

Mr. Knowlton: That is all I have. Thank you.

Commr. Mitchell: Maybe it would be better to have all the respondents cross examine at one time.

By Mr. McDonald:

Q. To be accurate, Mr. Murphy, wouldn't all of your exhibits in so far as they relate to egg shipment receipts vs. loss and damage claims, shouldn't the word "thereon" be deleted in all instances and not just the one or two that Mr. Knowlton mentioned?

A. Yes, it should.

Commr. Mitchell: Why should it? Why should it?

The Witness: Well, where I state, for instance, the number of cars of eggs received in 1940, on the one hand, and then state the number of claims, I don't mean to say that those particular claims covered those particular cars.

Commr. Mitchell: They are the claims which the railroads used during that period of time, aren't they?

The Witness: That is correct. That is as close as you could ever get to them.

Commr. Mitchell: So if the railroads don't believe that that is correct they can bring in their own evidence and show it then. As far as your records are concerned, these are the claims during the period set out in your exhibit?

[fol. 35] The Witness: That is correct.

Mr. McDonald: Commissioner Mitchell, all that I had in mind there was simply to be sure that every one understood that we weren't necessarily comparing like with like here. I have no objection to the exhibits in the form they are as long as everybody clearly understand the facts.

Commr. Mitchell: As I understand it these were the claims that were filed during that period of time?

Mr. McDonald: Yes, sir. But these would indicate that the claims refer to the exact shipments that were handled in that year and that is not the fact either as he admits.

Commr. Mitchell: You can show it. Maybe it isn't the fact. I don't know. But that is what your records show.

Mr. McDonald: No, sir. We will, yes.

Commr. Mitchell; Weren't these the same for the period?

Mr. McDonald: That is true but the point is that the witness himself has admitted they don't necessarily apply to shipments which moved in the identical year.

In other words, for example, the 1949 claim payments that appear on the bottom line of Exhibit 1 may be claim payments which related to 1948 shipments.

Commr. Mitchell: Are they claim payments for 1948?

Mr. McDonald: I don't know, but the point is this witness doesn't know that they are 1949 with respect to the shipments that he shows for 1949.

[fol. 36] Commr. Mitchell: We will go ahead. I don't think it is material. If you want to show it in your own evidence, why, all right.

By Mr. McDonald:

Q. Mr. Murphy, I gathered the impression from following your reading of this statement that you yourself were inclined to feel that possibly one cause of egg damage may be related to the truck movement of eggs prior to their delivery to the rail carriers for transportation at a given point of origin, is that correct?

A. Yes, it is.

Q. Did you make any investigation whatever at any point of origin to determine whether or not there was any factual foundation for your belief in that respect?

A. No, I did not.

Q. Any reason why not?

A. Physical limitation.

Q. In other words, the Commission testimony, then I take it, is confined entirely to the situation at New York City?

A. Correct.

Q. And that despite the fact that you yourself have a definite notion that a part of the responsibility or cause may be found at point of origin where shipments are trucked a considerable distance to the rail head and there accepted for rail transportation?

A. I got that impression from the Commission's case, [fol. 37] 52 I. C. C. 47. They stated that right in the record.

Q. That was in 1919, if I remember correctly?

A. I believe it was.

Q. You made no current investigation?

A. Not at point of origin, no.

Commr. Mitchell: I think the Department of Agriculture was making a very careful investigation and they would come in with figures and facts covering that, isn't that correct?

Mr. Matson: Our figures will cover some of that information, your Honor.

Commr. Mitchell: Didn't the department make an investigation at rail heads where these eggs come to the railroads?

Mr. Matson: Yes, sir.

Commr. Mitchell: I think that is one of the reasons

that we didn't do it, because we understood that the Department of Agriculture was going to do that.

Mr. Matson: We are going to have an exhibit on that.

Commr. Mitchell: Is that all the cross examination?

Mr. McDonald: Just one minute, Mr. Commissioner. That is all I have. Thank you.

Commr. Mitchell: Any other attorneys representing the respondents desire to examine?

(No response.)

Commr. Mitchell: You may proceed then, Mr. Matson.

By Mr. Matson:

Q. Mr. Murphy, on page 6 of your prepared statement [fol. 38] you state that in repacking the consignee's representative examines every egg in the set-aside cases. What is the basis of that statement? Did you observe any repacking by consignees in their warehouses or at any other point?

A. I observed repacking at a railroad pier but not at the consignee's place, no.

Q. Then this statement would be limited to the repacking at the railroad pier so far as your definite knowledge is concerned?

A. As far as my intimate knowledge is concerned, yes.

Q. Now, what sort of examination did every egg in these cases get? Did they candle the eggs?

A. No, they did not.

Q. What did they do?

A. Just picked the egg out, looked at it and put it back again.

Q. One egg at a time?

A. Well, it is a pretty fast operation and I wasn't a very skilled observer but they didn't seem to have any special equipment and they did it rather quickly.

Q. It makes a big difference whether they had one egg or two eggs in their hand at the time. Did you observe that?

A. No, I did not. I think they worked with both hands, if that is helpful.

Q. I think it will be developed that one method of examining eggs is to click two eggs together, and I believe

some handlers can do it with both hands, they can click four [fol. 39] eggs at the same time, and examine eggs in that way, but you didn't see that done?

A. No, I didn't.

Q. Now, you say the stained, leading or cracked eggs are removed and repacked into other cases in order to consolidate the damage. Do you know whether any checked eggs were removed in that process?

A. Why I believe they were.

Q. Let me ask you this, then. Do you know what a checked egg is?

A. Yes, I do.

Q. What is your definition of a checked egg?

A. A checked egg is an egg on which the shell is cracked but not the membrane.

Q. Do you know the difference between a blind check and another check?

A. Yes, I do.

Commr. Mitchell: What was that first word?

Mr. Matson: Blind check.

The Witness: Well, a blind check is one that you can't discern with the naked eye.

By Mr. Matson:

Q. It was your observation that some checked eggs were taken out and replaced by other eggs?

A. That is correct.

Q. What did they do with these checked eggs?

A. Consolidated them, put them in a case by themselves. [fol. 40] Q. And they did the same thing with the cracked and stained eggs?

A. That is right.

Q. Now, on page 7 you state that, "Upon arrival at destination, all damage found by the RPIA inspection is presumed to have occurred in transit and as a practical matter the RPIA inspection report is almost the equivalent of a draft against the carrier since a claim supported by it is good as collected."

In your subsequent testimony you point out that the RPIA have reduced the amounts of these damages found,

so these two statements should be read as modifying each other, I presume?

A. That is right. That particular statement that you referred to was made in the light of the investigation in January and February, 1948, and at that time the tolerance rule was not being invoked.

Q. Then you say under this method of settling claims the railroads are obliged to pay for all damage to the eggs found at destination even where there were damaged eggs in the shipment at the time it was presented to the railroad at point of origin?

You assume in that sentence which I have just quoted that there was damage in the egg cases at the point of origin?

A. Yes, I do.

Q. Do you know whether or not it is possible to tell in New York whether a cracked egg was cracked in transit or was cracked at the point of origin?

[fol. 41] A. No, that is the whole trouble. You can't tell.

Q. You don't know whether it is or not?

A. No. No.

Q. We will have evidence to show that it is possible.

On page 8 you refer to representatives of the United States Department of Agriculture, and if you don't mind I would like to have you identify them.

A. Well, Mr. Schilt—I don't have his initials but I see him present——

Q. Leon Schilt.

A. (Continuing): —took part in that matter. There may have been others. I don't know who they were.

Q. He is the only one that you know?

A. The only one I met.

Q. On page 9, again, you say, "the railroads at New York were paying not only for the damage which occurred in rail transportation but also for the damage that normally occurs to eggs during the truck haul from the point at which packed to the point of rail shipment."

I am asking you what evidence you have of any damage occurring in the prior truck haul, or is that just an assumption?

A. Well, it seemed to me it was a fact. I can't give you a particular car number or a particular case number but that was my considered opinion after having worked on the matter for about a month.

[fol. 42] Q. You mean after talking to these railroad claim men for a month?

A. No, after having looked at the claims and talked to the claim men, yes.

Q. But you in answer to my previous question stated you could not tell or did not think it could be told whether the damage occurred prior to the rail haul or not. Now, you say that you know that there was damage prior to the rail haul.

A. Well, I——

Commr. Mitchell: As I understand it, you asked him if he could tell where the crack in the egg occurred.

Mr. Matson: Yes.

Commr. Mitchell: You said the department would have evidence to show where the crack did occur.

Mr. Matson: I think that would——

Commr. Mitchell: There is a difference between a crack and damage, isn't there? Oh, go ahead.

The Witness: I think I could answer that this way. That was not an original conclusion of mine. It is a mere repetition of what the Commission said in its National Butter and Egg case.

By Mr. Matson:

Q. In other words, this statement on page 9 goes back to 1918?

A. No, I think it has been true from 1918 up to the present time.

Q. Well, the finding made by the Commission was in 1918. They haven't made any finding for the future as to what [fol. 43] is going to happen to an egg when it is put on a truck.

A. No. I am assuming that the condition still exists, that the Commission found in 1918.

Q. Well, my good man, you know that the roads are different now than they were in 1918, the trucks are different? There is very little similarity of conditions?

A. I just drove in from New York a while ago and I think they are as bad now as they were in 1918.

Q. Were there any egg trucks on that road?

A. I don't know what they had in them.

Q. Down at the bottom of page 9 you say, "it is obvious that the eggs were not rehandled and repacked at Dubuque so as to remove the damaged eggs at the time the car was loaded."

That, again, is based, is it not, upon an assumption that there were damaged eggs to be removed?

A. That is correct.

Q. And about a third of the way down on page 10 you have a similar statement and that is based on the same assumption?

A. That is correct.

Q. Do you know how Mr. Pregler is handling his egg shipments now?

A. Well, I read a recent report of one of our Commission's special agents who had just been out there a few months ago, and as I recall it, the operation now is substantially the same as reported in that case that I referred to.

[fol. 44] Q. You mean he is shipping by rail from out west to New York?

A. He was at the time this report was made.

Q. How long ago was that?

A. Several months ago, I don' know whether all of his eggs were moving by rail but some of them certainly were.

Mr. Matson: I don't want to testify but I think as a matter of fact he is shipping by truck.

Comr. Mitchell: Let's just stay at cross examination.

Mr. Matson: That is all.

Commr. Mitchell: If you have any evidence produce it. Is there any other examination?

Mr. Morken: Yes.

Commr. Mitchell: Whom do you represent?

Mr. Morken: Midwest Dairy, Minneapolis.

By Mr. Morken:

Q. Mr. Murphy, two or three times in your statement you mentioned the eggs were "trucked long distances" and "trucked considerable distances" to point of rail origin. Will you define what you had in mind by "long distances," please?

A. Well, I had in mind the distances referred to in that motor carrier docket that I referred to here at page 9. I think the report in that case gave a pretty good description of Pregler's operation.

Q. Is it not a fact that Pregler has I. C. C. motor carrier authority from all points, roughly, in the northeastern part [fol. 45] of Iowa to the town of Dubuque?

A. I don't know what his rights are.

Q. Is it not a fact that his longest haul is approximately 150 miles?

A. I don't know.

Q. Now, Mr. Murphy, will you tell me what the difference is between a 150-mile haul over a concrete highway, what the difference in that haul is, and a 10-mile haul over city streets?

A. I haven't any idea.

Q. Is there a difference, would you think?

A. I don't know.

Q. In your own personal opinion should any type of a movement of the eggs prior to the movement by rail car subject the eggs to the 5 per cent tolerance?

A. You want my opinion?

Q. Yes.

A. I would say yes.

Q. In other words, if they were loaded on a 4-wheel dolly and rolled around a warehouse, and in and out of elevators, and up and downstairs before they are loaded in the rail car, those eggs should be subject to a 5 per cent tolerance?

A. I wouldn't call that trucking. I mean over-the-road trucking. There is probably a reasonable point that you have got to stop at. Where it is, I don't know.

Q. In your investigation down there in New York with [fol. 46] the RPIA did you run across any figures or anywhere in your statement did you mention figures that had

anything to do with my client, Midwest Dairy Despatch of Minneapolis?

A. I don't recall if I had. I saw a great many claims and a great many statistics. I don't recall that name in particular.

Q. You say that Mr. Pregler is a typical forwarder. Are you aware that he is not a forwarder at all?

A. Well, he was a forwarder by my definition. I described him as an exempt forwarder. When I say he is a forwarder I mean he is a forwarder to the extent that he consolidates less than carload lots into carload lots.

Q. In actual practice isn't it the shippers that are consolidating and paying Mr. Pregler a service for handling their eggs?

A. I don't think so.

Q. You didn't make any investigation of a forwarder that handles his eggs a little differently than Mr. Pregler, did you?

A. No, I didn't.

Commr. Mitchell: Is your client a forwarder?

Mr. Morken: Yes.

Commr. Mitchell: Is Mr. Schultz with your company? Is there a Mr. Schultz?

Mr. Morken: No. Mr. Roberts is the president of our company.

By Mr. Morken:

Q. Why did you pick a fellow like Pregler that loads the eggs directly from his truck into a box car?

[fol. 47] A. Well, I picked him because his claims were substantial and at the time that I picked him I hadn't any idea how he loaded his eggs.

Q. You didn't pick him because he was a typical operator then?

A. No.

Q. Isn't it a fact that other operations are quite different than Mr. Pregler's?

A. I don't know.

Q. You mentioned this inspection of the eggs at the time of loading. Do you think that the same type of inspection that they give when they are unloaded for damage would

be satisfactory for an inpection when they are loaded; in other words, about twenty cases out of a car, say?

A. I am not sufficiently expert to pass an opinion.

Q. Well, do you think when eggs are unloaded and checked for claims that inspecting twenty cases out of a car is a satisfactory inspection to determine the amount of the claim?

A. Well, that is the way it has been done under the tariff for as long as I have ever known. I presume it is satisfactory.

Q. Do you think it is a safe conclusion that similar inspection at the time of loading would be a proper one?

A. I don't know how the railroads ought to handle it, frankly.

Q. Then, you aren't able to draw a conclusion?

A. No.

Q. I am a little hazy on this. You did make some remark [fol. 48] about the railroads not inspecting. Can you refresh my recollection on that? At the time of loading I am talking about.

A. Well, I made the statement that as a general matter eggs were not inspected at point of origin by the railroads.

Q. Now, how do you know that?

A. Well, I know it from having been in the business for a great many years.

Q. One of the gentlemen with the railroad made the remark about the delay would be so long that they would lose all the business. Are you able to tell us from being in the business so long, how long it would take to inspect twenty cases out of a car at the time they were loaded?

Mr. Knowlton: I didn't mention twenty cases. I said they inspect the carload for the broken eggs.

Mr. Morken: My question is twenty cases. I didn't say that you said it.

Mr. Knowlton: Don't tie it up with mine.

The Witness: I haven't any idea.

By Mr. Morken:

Q. All right. Did your investigation reveal any collusion or corruptiveness on the part of the railroad employees or the members of the RPIA in New York?

A. No, it did not.

Q. Do you know whether or not there has been some substantial arrests of a large number of railroad employees for collusion in theft in the matter of handling claims on [fol. 49] inspection of eggs?

A. No, I don't.

Mr. Morken: You don't. That is all.

By Mr. Blanchard:

Q. Mr. Murphy, I understand from your testimony that Exhibits 1 to 5, inclusive, contain certain specific figures which you took from the records and other figures which you arrived at by conversion, is that right?

A. That is right.

Q. Will you identify for me the columns which are the actual figures and those which are the computed figures?

A. Well, in Exhibit——

Q. Exhibit 1. Exhibit 1 will be all right.

A. (Continuing). —1, for example, the column marked (A), those are actual figures.

Q. Yes.

A. The column marked (B) is my own computation.

Q. That is a constructive figure?

A. That is right. It is the number of cases divided by 600.

Q. Yes. You used 600 for a conversion factor all the way down the line?

A. I did, yes, in every case.

Q. The number of claims is actual?

A. The number of claims is actual. The percentage is my computation. The amount is actual.

Q. What is that percentage; percentage of what? Take [fol. 50] the second line, the figure 92.8 per cent, that means that 1965 is 92.8 per cent of what?

A. Of 2116, of the year before. I took 1940 as a base and then worked the percentages from that time.

Q. Now, the amounts are actual?

A. The amounts are actual amounts taken from the records of the Railroad Perishable Inspection Agency.

Q. In the next percentage column you again use 1940 as an index figure 100?

A. That is correct.

Q. Now, the average per car handled, is that merely the total amount divided by the total number of cars?

A. That is correct.

Q. Throughout that whole second column you have used 600 cases per car as the conversion factor?

A. Yes, in every case.

Q. Have you any information as to whether it was the practice of the industry back in the years 1940, 1941 and 1942 to load 600 cases to the car?

A. No, I don't think it was. I think the figure is excessive with respect to those years but in order to have a constant, so as to compare like thinks I used 600 cases. I think it is too high for 1940.

Q. So that as a matter of fact the 600 cases came in with an ODT order, didn't it?

[fol. 51] A. This is right and went out with an ODT order, I guess.

Q. About the first of 1943?

A. That is correct.

Q. The titles to your Exhibits 1 to 5 just simply state loss and damage claims. Are those claims filed or claims paid?

A. As far as I know they are claims paid.

Q. Claims paid. May we amend the title of each one of those five pages to reflect that fact?

A. Correct.

Q. If it should appear that there were more cars than 7586 received in 1940 necessarily your figure of $9.22 would be reduced to that extent, wouldn't it?

A. Yes, that is correct.

Q. Comparing 1940 to 1948, for example, do you know whether or not there was a change in the dollar value of a case or a dozen eggs between those periods?

A. Yes. There was, of course.

Q. These figures, 1940, are the claims paid based on 1940 values of eggs?

A. I don't know what they were based on, frankly, but I assume so, yes.

Q. And we may also assume the 1940 egg claims were based on the 1948 value of eggs?

A. I believe that is correct.

Q. I wonder if you could have any way of giving us any [fol. 52] index by which we might reconstruct the 1948 claims based on 1940 values?

A. I haven't any such information, no, sir.

Q. Isn't it a fact that unless some such adjustment is made you have an inflation reflected in your figures which has no relation whatever to rail handling or truck handling or the quantity of checks in the car or anything else?

Commr. Mitchell: I should think your client would be in fine position to give us that evidence.

Mr. Blanchard: I think we probably will, Mr. Commissioner. I am just asking this witness if he had.

Commr. Mitchell: He has already answered. I can see no sense in wasting time on that. He said he did not do it. Everybody knows that prices went up. If you want to present that evidence you have a perfect right to do so.

By Mr. Blanchard:

Q. You are familiar with the fact that there are either four or six commercial grades of eggs, are you not, the extra large, the large and so on down to the pullet eggs?

A. Yes, I pretty well understand that.

Q. Do you know whether there is any difference in value of eggs, depending on size, whether the large eggs are more or the smaller eggs are worth more?

A. I have no expert information on the subject at all. I know as a practical matter that the large eggs usually cost more than small eggs, but I prefer not to get into any [fol. 53] discussion about the quality of eggs. I just don't know anything about it.

Q. But that being true, have you made any investigation to determine whether or not there was a greater or lesser proportion of greater or less value of eggs in the 1940 figures than there were in the 1948?

A. No, I did not.

Q. Now, eggs move both in wood, solid wood cases, and in two or three types of fibre cases, do they not?

A. That is correct.

Q. Is there any way you can tell us the proportion of the 1940 receipts that were in wood as compared——

A. No, I can't.

Q. (Continued). —as compared to fibre cases and similar for 1948?

A. No, I can't do that.

Q. Do you know whether or not during the war there was a very considerable shortage of wood cases making the use of fibre cases almost compulsory at times?

A. No, I don't.

Q. But if it should appear that in any of these years there was an increased amount, proportion of fibre cases used, and it also appeared that the transportation of eggs in fibre cases was more hazardous, might that condition not account for some of the increase in claims that you set forth here?

A. I wouldn't know, frankly.

[fol. 54] Q. Now, what in your opinion would give the result upon the claims of Mr. Pregler which you referred to had he changed his method of operation and candled and graded and sorted his eggs at Dubuque before loading them? In your opinion would his claims have been greater or less?

A. If he took out the damaged eggs before he shipped the car from Dubuque I assume the claims would be less.

Q. I included that by grading them.

A. Yes.

Q. When I say grading, he grades the checks and broken eggs and dirties and so forth.

A. If he broke any eggs taking them in by truck but removed them before he shipped by rail, I believe the claims would be down.

Q. Would be down?

A. Yes.

Q. So that it is your opinion that there is some consideration to be given to the difference between the man who simply loads the eggs as he picks them up from the farm and the man who first candles, grades and sorts them into grades and removes the dirties, or classifies them? There should be some different treatment of those two types of handling the business?

A. I would prefer not to express an opinion. I am really not qualified.

[fol. 55] Mr. Blanchard: That is all. Thank you.

By Mr. Staley:

Q. When you were making your inspection down at the piers in New York, watching them repack the eggs, did you observe whether the consignees were making claims and the railroads were making claims—checked eggs as well as cracked eggs and leakers?

A. I observed a large number of claims that included checked eggs.

Q. Now, while they were repacking and removing the eggs from damaged cases and putting them in other cases, would they separate the checks in one place and the leakers in another?

A. That is right.

Q. When you referred in your testimony to stained, leaking or cracked eggs being removed, that included checked eggs, did it not?

A. Yes.

Mr. Staley: That is all.

By Mr. Krebill:

Q. Mr. Murphy, in connection with the trucking at point of origin, and with reference to the 5 per cent tolerance, do you understand that point of origin within the 5 per cent tolerance rule means that it has to be repacked or rehandled on the rails?

A. Well, as I understand the tariff it states that it must be done at the rail shipping point.

Q. What do you understand to be the rail shipping point? [fol. 56] Does the actual rehandling and repacking have to be done at a warehouse having a rail siding or is it within the switching limits?

A. I don't know about that. I think the tariff would have to speak for itself.

Commr. Mitchell: Whom do you represent? I have forgotten.

Mr. Krebill: The army.

Commr. Mitchell: Oh, the army?

Mr. Krebill: The Department of the Army and Air Force.

Commr. Mitchell: All right.

Mr. Krebill: That is all.

Comm. Mitchell: Any further cross examination?

(No response.)

Commr. Mitchell: Mr. Johns, any redirect?

Mr. Johns: No, sir. I would like to offer these Exhibits 1 through 9.

Commr. Mitchell: Is there objection to the offer of Exhibits 1 through 9?

(No response.)

Commr. Mitchell: There being no objection they will be admitted.

(Commission's Exhibits Nos. 1 through 9, inclusive, Witness Murphy, received in evidence.)

Commr. Mitchell: Is that all with Mr. Murphy, Mr. Johns?

Mr. Johns: Yes, sir.

[fol. 57] Commr. Mitchell: Thank you, Mr. Murphy.

(Witness excused.)

L. W. North was sworn and testified as follows:

Direct examination.

By Mr. Knowlton:

Q. Mr. North, will you give your name to the reporter and briefly state your experience?

A. L. W. North; address, 1 Park Avenue, New York City.

I am a member of the Official Classification Committee with whom I have been associated for over twenty-five years.

[fol. 58] Mr. Knowlton: Mr. Commissioner, Mr. North's statement is an exhibit of the tariffs from 1909 to date. His

comments are explanatory of the changes that were made. We have sufficient copies of his prepared statement, the comments or the exhibit and the exhibits to give to all of the attorneys, and if it is your wish I suggest that it be incorporated in the record without taking the time of everybody to read it.

If anybody wants to come and ask questions of Mr. North——

Commr. Mitchell: Let's see what it is. Mr. Knowlton, has this been circulated?

Mr. Knowlton: No, it hasn't. It is being circulated right now.

Commr. Mitchell: I do not suppose these gentlemen that represent these other parties are in a position to say whether they want to waive the reading now or not. Are you?

Mr. Matson: I am willing to waive the reading at this time if Mr. North will be available for cross examination before the hearing is over. We are certainly not going to have him excused.

Mr. Knowlton: That was my intention, to have him available for cross examination here, at least the rest of the day.

Commr. Mitchell: Well, this one is only five pages long. If there is any doubt in anybody's mind we will have it read. Let's read this one, these five pages. Go ahead with that, Mr. North. I would like to know myself.

[fol. 59]. You may proceed, Mr. North, to read your statement.

The Witness: Prior to the year 1919, no special rules or regulations governing descriptions, marks, inspection and delivery of eggs were published in the Official Classification although there were rules and regulations regarding inspection of eggs at time of delivery in individual tariffs applying throughout Eastern Trunk Line Territory.

These rules and regulations were considered by the Interstate Commerce Commission in Docket No. 10012, National Poultry, Butter and Egg Association, et al v. New York Central Railroad Co., et al., which case was decided January 21, 1919.

In accordance with this decision regulations governing descriptions, marks, inspection and delivery of eggs and the handling of claims thereunder were published in Supple-

ment No. 33 to Official Classification No. 44, effective July 15, 1919.

My Exhibit No. 10——

Commr. Mitchell: We had better have that marked for identification, hadn't we, Mr. Knowlton?

Mr. Knowlton: Will you please identify that as Exhibit 10?

(Respondent's Exhibit No. 10, Witness North, marked for identification.)

Commr. Mitchell: All right, go ahead, Mr. North.

The Witness: My Exhibit No. 10 shows the rules and regulations then published and the changes in those rules [fol. 60] and regulations that have taken place since then.

It will be observed from Section 2 of Rule 2 that at Boston, New York and Philadelphia different regulations were applicable than at other points. Briefly, no inspection of the contents of any cases was permitted when,

1. No cases showed external evidence of damage.
2. None of the cases had been recoopered in transit.
3. No part of the load shifted in the car.
4. Where a carload was not transferred from one car to another.

At points other than Boston, New York and Philadelphia, consignee had the privilege of lifting the lids of twenty cases in any carload and of examining the top layer thereof and if such examination disclosed damage, he had the right to make further examination of the shipment and to set aside all cases containing damaged eggs.

In Supplement 34 to Official Classification No. 44, effective October 25, 1919, the rule was amended to provide that at Philadelphia consignees would have the same privilege as applied to points other than Boston and New York, in other words the privilege of lifting the lids of twenty cases in any carload and examining the top layer.

No further change was made in the rule until February 10, 1941, at which time in Supplement No. 3 to Official Classification No. 58 (C.F.C. No. 14) Boston and New York [fol. 61] were made subject to the same rules as applied at other points.

This change was brought about by an application filed by the New York Mercantile Exchange concurred in by the Boston Fruit and Produce Exchange and considered on the July, 1939, public docket of the Classification Committees. It was stated that in many instances where the consignees in New York had signed for eggs in "liner" packs—a moisture proof paper container or bag lining within the wooden cases—or in fibre cases, due to the nature of the package, damaged and leaking eggs did not show as external damage, therefore under the rules applicable at New York and Boston no exception could be taken at time of delivery.

Effective December 7, 1945, in Supplement No. 36 to C.F.C. No. 16, the rules were amended to prohibit the use of second hand fibre cases.

In the early part of the year 1948, the carriers, confronted with large claims, especially in the New York area, issued a special docket proposing a number of changes in the rules and regulations governing the shipment of eggs. Public hearings were held in the month of March, 1948.

As a result, effective July 24, 1948, in Supplement No. 2 to C.F.C. No. 18, the following changes were made in the tariff provisions:

Note 5, paragraph (a) defines "rehandled and repacked" eggs as eggs that have been rehandled and repacked at [fol. 62] point of origin of rail shipment from which broken, cracked, checked eggs and eggs stained from broken eggs have been removed.

Paraaraph (b) similarly defines "storage packed" eggs.

Paragraph (c) specifies that the terms "current receipts" or "graded" shall apply to eggs not complying with provisions of paragraphs (a) and (b).

Section 2, paragraphs (a) and (b) specifies that upon arrival at destination consignee may have the privilege of lifting the lids of twenty cases and of examining the top layer thereof for the purpose of ascertaining damage, but paragraph (b) specifies that as to "current receipts" or "graded" eggs, in other words, eggs not complying with provisions of paraaraphs (a) and (b) of Section 1 if damage is 5 per cent or less it shall be considered complete and final for the entire shipment and a good order receipt shall be required of consignee.

If such examination, however, discloses more than 5 per cent damage, consignee shall have the right to make further examination of the shipment and set aside all cases containing more than 5 per cent damage.

Suspension of this tariff was requested by various parties, but the Interstate Commerce Commission allowed the tariff to become effective and instituted the present investigation.

Mr. Knowlton: I tender Mr. North for cross examination.

Commr. Mitchell: Any cross examination of the witness?

[fol. 63] Mr. Matson: Yes.

Commr. Mitchell: Go ahead, Mr. Matson.

Cross-examination.

By Mr. Matson:

Q. Mr. North, on the bottom of page 3 you state that in 1945 second hand fibre cases were outlawed. What was the reason for that?

A. We didn't think they were a proper container for shipping eggs.

Q. What is the basis of your thought on that?

A. They lost a good deal of their strength after being once used.

Q. Did you conduct an investigation to determine that?

A. Yes, sir.

Q. Did your claim conditions improve after you outlawed second hand fibre cases?

A. Not materially. As a matter of fact, I guess they didn't.

Q. You observed, then, no beneficial effect from outlawing second hand fibre cases?

A. Well, there must have been some beneficial effect by restricting shipment of eggs to new cases.

Q. On page 4 in connection with Note 5, paragraph (a), you show that the term "rehandled and repacked" eggs is now defined to mean eggs "that have been rehandled and repacked at point of origin of rail shipment." What do you mean by point of origin of the rail shipment?

[fol. 64] A. At the rail head would be my opinion.

Exam. Mullen: What is that, sir?

The Witness: At the rail head, where they are delivered to the carrier.

By Mr. Matson:

Q. Now, if the rail head were Chicago would that include a shipment that was trucked in from the city limits of Chicago?

A. Well, it might.

Q. Well, does it or doesn't it? It is your tariff.

A. Yes, I think perhaps your question had more probably be directed to the inspection bureau people that administer these rules. Really the Classification Committee is the publication agent for them.

Q. Well, did these inspection people work out the phraseology of these tariffs, or do you?

A. They worked out this phraseology.

Q. And you believe that that would cover a shipment of eggs trucked in from the city limits of Chicago?

A. I would prefer that that question be answered by a representative of the inspection bureau.

Q. Well, I would like to have your answer on that. I think you are a responsible man and should answer it.

Mr. Knowlton: He gave it.

The Witness: No.

Commr. Mitchell: Are you in a position to answer it? If [fol. 65] you have knowledge you should answer it. If you don't, why, say you don't know.

The Witness: It isn't my wording, Mr. Commissioner, and I had best say I don't know.

Commr. Mitchell: All right. If you don't know, all right.

By Mr. Matson:

Q. But you published the tariff?

A. We publish the tariff, yes, sir.

Q. If a shipment of eggs was transferred from the cases that they are in into brand new bases, and new flats or fillers supplied, and during the process each egg were candled, would you consider that that shipment had been rehandled and repacked?

A. And all the broken, checked, and stained eggs taken out?

Q. Yes.

A. As provided in Note 5?

Q. I am not talking about Note 5. I am asking a question as to the physical operation. Is that a rehandled and repacked case of eggs?

A. If all the broken, checked, cracked eggs were removed I would say yes, and if it was packed in cases with new fillers and flats.

Q. Your answer is irrespective of where that operation takes place?

A. No. I wouldn't say that. The rule states that it must be done at the point of origin of the rail shipment.

Q. I am not talking about the rule. I am talking about [fol. 66] the operation.

A. Well, I thought I answered your question as to the operation. I said that the inspection bureau was better fitted to answer that than I.

Q. Now, we are talking about something else.

A. I don't think you are.

Q. We are talking about rehandling and repacking a case of eggs. You take the case of eggs and set it here and you put a brand new case over here and you take the eggs out of this case and put them in this case and you candle each egg and you use new flats and fillers in the new case.

Now, you have stated to me that that constitutes rehandling and repacking. I am asking you, is that true regardless of where that occurs?

A. I would say no.

Commr. Mitchell: Do you understand that question now?

The Witness: I think so. He wants to know from me whether if you rehandled and repacked eggs, took out all the broken, checked and stained eggs 150 miles, we will say, from the rail carrier and they were transported by some means to the rail carrier, that that would constitute rehandling and repacking.

Commr. Mitchell: That isn't what he asked you if I understand the question at all.

Mr. Matson: No.

[fol. 67] The Witness: Well, then, I misunderstood your question.

You asked me did it make any difference where that rehandling and repacking was done.

Commr. Mitchell: He asked you whether or not if you took from one case and put them in another and took out the cracks and the leakers and the damaged eggs and candled them, would that be in your judgment repacking and rehandling.

The Witness: Yes, sir, but I thought he qualified it and said regardless of where that was done.

Commr. Mitchell: You didn't qualify it, did you?

Mr. Matson: I don't think so, Mr. Commissioner.

Commr. Mitchell: Well, you ask him the question. You know more about it than I do.

Mr. Matson: All right. Let's try it another way.

By Mr. Matson:

Q. Suppose this operation takes place in Dubuque, Iowa. The railroad runs through Dubuque, doesn't it?

A. Yes.

Q. In that case is the case rehandled and repacked?

A. And it is tendered to the railway at Dubuque, Iowa?

Q. The case hasn't been tendered to any one. It is sitting in the warehouse.

A. Well, I think you are asking me a hypothetical question there.

Q. Nothing hypothetical about that. That is an every day operation, and you know it.

[fol. 68] Commr. Mitchell: Let's not argue it. You ought to be able to answer that question.

The Witness: Well, I would say on its face it was rehandled and repacked if it was tendered to the carrier in such shape at the point of origin of the rail shipment.

Mr. Matson: Mr. Commissioner, I suggest that I am entitled to an answer to the question, but I think the answer is obvious.

Commr. Mitchell: You should answer that question without any difficulty. Will the reporter read it to the witness, please?

(Question read.)

The Witness: I would say it is rehandled and repacked but it may not conform to our definition of rehandled and repacked.

Mr. Matson: That is the point that I wish to bring out. The matter under investigation in this proceeding is your definition and we are here to find out where it is reasonable.

By Mr. Matson:

Q. Now, if this shipment of eggs which is rehandled and repacked at Dubuque is tendered to the railroad at that point, you will carry them as rehandled and repacked eggs within the contemplation of Note 5, is that right?

A. Yes, sir.

Q. On the other hand, if that shipment of eggs would happen to be handled by a motor carrier from Dubuque to a town on a rail siding ten miles this side of Dubuque, and there loaded into a car, according to your present tariff they [fol. 69] would lose their identity as rehandled and repacked eggs?

A. Yes, sir, I would say under the tariff they would.

Q. What provision of your tariff would describe those eggs at that subsequent point?

A. Well, it would be paragraph (a) that says they have to be repacked at point of origin of the rail shipment, which I don't understand occurred in the circumstances you asked me.

Q. Well, if that didn't occur, what does cover it then, that is the question?

A. Paragraph (c), which specifies that the terms "current receipts" or "graded" shall apply to eggs not complying with paragraphs (a) and (b).

Q. What do you mean by current receipts?

A. Well, it was always intended to mean so-called run-of-the-nest, but the term "graded" was put in to cover just such a circumstance as you describe and that term was used at the request of shippers who didn't want to describe their eggs as current receipts with the possible stigma that attaches to that term.

Q. When was the term "graded" inserted in the tariff?

A. In 1948, July.

Q. Who was it that requested that you use the word "graded" as a term of art in the egg industry?

A. Oh, I think it was the National Poultry, Butter and Egg Association.

[fol. 70] Q. Do you know whether the term "graded" contemplates the official grade set up by the United States Department of Agriculture?

A. No, I think we define it here as not being a commercial grade.

Exam. Mullen: Are you looking for that reference?

The Witness: Yes.

Exam. Mullen: It is at the end of (c) there.

The Witness: Yes. "The term current receipts or graded when used on a shipping order and bill of lading do not necessarily denote the commercial grade of the eggs."

By Mr. Matson:

Q. Under Section 2 as stated on page 4, the arrangement is that the consignee may have the privilege of lifting the lids of twenty cases and of examining the top layer for the purpose of ascertaining damage. How long has that provision been in effect?

A. Oh, it has been in for years. In places other than Boston and New York it was in effect, well, since 1919; when we first established these regulations.

Q. Why do you just lift the lids and look at the top layer? Why not look down to some of the lower layers? Is the damage always in the top layer?

A. No, but I think it may have something to do with congestion at the stations in practical operation.

Q. In other words, if there is damage in the top layer, [fol. 71] why, there is probably damage in the other layers, too?

A. Well, they have the privilege of examining it to see.

Q. But if there is not damage in the top layer, could we conclude from that that there is no damage down below?

A. Well, the rule says that they shall accept the car in good order.

Q. You mean by that, then, that there is no damage in the lower layers if there is no damage in the top layers?

A. Well, I don't say that. I say the rule says they shall

accept the car in good order if examination of the top layer of the twenty cases doesn't disclose damage. I guess it is presumed that if there is damage it would be negligible and wouldn't affect the value of the shipment.

Q. How much damage would you put in that category?

A. I don't know.

Mr. McDonald: Mr. Commissioner, I am a little bit reluctant to do so, but I think I would like to call attention to the fact that this witness was offered to give the historical record of the classification rules rather than to pose as an inspection and damage expert, and I submit that the line of cross examination is going a little bit far afield from the character of his testimony on direct examination.

Commr. Mitchell: Well, you may go ahead. Confine it as closely as you can.

By Mr. Matson:

Q. Just one more question, Mr. North, and this for clari- [fol. 72] fication. I understand there is another provision if there is external evidence of damage in addition to this top layer that in those circumstances an investigation may be made of the lower layer, too, is that right?

A. That is correct, yes, sir, that is in paragraph (b).

Mr. Matson: That is all. Thank you, Mr. North.

By Mr. Morken:

Q. Mr. North, you are a member of which Classification Committee?

A. The Official.

Q. Official. Did you participate in the hearing and investigation that the railroad or Classification Bureau put on to determine whether or not this requirement of rehandling and repacking at point of rail origin was necessary or not?

A. I participated in the public hearing as a result of that docket, yes, sir.

Q. Now, did the commission take into consideration at all——

A. The committee you mean.

Q. The committee. Did you take into consideration at all

the fact that these eggs that might move in a city before they are actually loaded into the car might have a truck movement?

A. Yes, I think we took that into consideration.

Q. Did you take into consideration the different types of trucks that the eggs might move in to the city?

A. Well, we knew that they might move in different types of trucks, yes, sir.

[fol. 73] Q. Did you think it would make any difference if they moved in the little light bouncy Ford or in a great big heavy, say, Mack with a big trailer?

A. I think perhaps it would.

Q. Yes. What was your conclusion in taking those facts into consideration? Is there any difference?

A. I don't think that they are practical for inclusion in a tariff provision. You couldn't make such a decision. It would be unsound in my opinion. You couldn't say that eggs that moved in a little light Ford would be any different than a large truck.

Q. The commission, though, did figure that the eggs could ride all over the city of Chicago and they wouldn't sustain any damage, is that correct?

Commr. Mitchell: You don't mean the commission.

Mr. Marken: I am sorry. I mean the Classification Committee.

The Witness: Well, I don't know that we did consider that, particualrly. I think there would be damage.

By Mr. Morken:

Q. I am a little unfamiliar with the various setups of the railroads. If this next question is not properly asked of you, why you tell me.

Do you have any knowledge or information about the collusion or the crookedness and arrest of the railroad employees on the piers of New York?

[fol. 74] A. No, sir, I do not.

Q. Do you know whether a witless will be called by the railroads on such information?

Mr. Knowlton: You are assuming there is and the testimony thus far was that there is none.

Mr. Morken: I am asking him.

Commr. Mitchell: Just a minute now. You have no right to carry on an argument between counsel. Address your questions to the Commission here. They will produce their witness as they see fit and at that time you will have a right to cross examine.

Mr. Morken: Well, if the Commissioner, please, I don't know if I had an answer to that last question or not, and I don't believe there was an objection to it. The question was, will such a witness be presented, if he knows.

Commr. Mitchell: Do you know whether there will or not? Can you answer?

The Witness: No, sir, I can't answer that.

Commr. Mitchell: All right.

Mr. Morken: All right. One more question, and maybe you are not the proper witness to answer this one either.

By Mr. Morken:

Q. Thirty years ago the Commission said that the railroads did not have proper or adequate facilities to handle eggs in New York. I want to know what the railroads have done in the last thirty years to improve their facilities?

[fol. 75] Mr. McDonald: I object to that, Mr. Examiner, as not a proper question on the basis of this witness' direct information.

Commr. Mitchell: I don't think it was gone into on direct examination.

Mr. Morken: No, except——

Commr. Mitchell: Objection will be sustained.

Mr. Morken: I have no further questions.

Commr. Mitchell: Any further cross examination?

Mr. Blanchard: I have a question.

By Mr. Blanchard:

Q. Mr. North, on page 2 of your statement you refer to four conditions in which might be found or all of which might be found in a car arriving at New York, Philadelphia or Boston, namely, external evidence of damage in one or more cases in the car, recoopering in transit, shifting of the load or transfer of the load in transit.

What was there in the Classification Committee's opinion about those four elements which made them supply a different rule where one or more of those conditions was found than they applied when no one of them was found?

A. Well, I don't think I understand your question.

Q. Well, if any one of those conditions was found in a load at New York, Boston or Philadelphia, the consignee was given certain privileges which he did not have if no one of those conditions was found?

[fol. 76] A. That is correct.

Q. What was there about those four conditions which caused the Classification Committee to extend different privileges to him when one or more of them existed?

A. Well, I expect they left the presumption that something had happened to the eggs and they weren't delivered in the same condition that they may have been received. That is just my personal opinion.

Q. Had you anything in your files to indicate whether or not that was the truth?

A. No, we wouldn't have, Mr. Blanchard.

Q. Will you investigate and see whether or not there was such a reason behind that exception?

A. I could do that, yes, sir.

Q. And advise us later at the hearing?

A. Yes, sir.

Mr. Blanchard: That is all. Thank you.

Commr. Mitchell: Any redirect?

Mr. Knowlton: Nothing. I would like to offer Exhibit 10.

Commr. Mitchell: Is there objection to the offer of Exhibit 10?

(No response.)

Commr. Mitchell: There being no objection it will be admitted.

(Respondent's Exhibit 10, Witness North, received in evidence.)

[fol. 77] Commr. Mitchell: That is all. Thank you, sir.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Knowlton: I will call Mr. Hodkinson.

E. A. Hodkinson was sworn and testified as follows:

Direct examination.

By Mr. Knowlton:

Q. Will you give your name to the reporter and briefly state your qualifications and state what preparation you have made in this proceeding?

A. E. A. Hodkinson, 1 Park Avenue, New York City 16, New York.

I am manager of the Commerce Bureau, Trunk Line Railroads, which is part of the Traffic Executives Association of Eastern Railroads. I have had over thirty years' experience along accounting, statistical and rate lines.

In connection with this case we made a claim study covering all the cars of eggs received in the New York Metropolitan District, the Philadelphia area, the Baltimore area, and the Boston area for the year 1947. This statement was worked up in conjunction with the Railroad Perishable Inspection Agency, and I became familiar with the operations of that agency as a result of the special study that I made at the direction of the Traffic Executives into the operations of all inspection agencies taking care of railroad matters in Official Territory. I visited all offices of the Railroad Inspection Agency.

[fol. 78] At New York in connection with eggs it is the practice of the agency to take a note of every car as it comes in regardless of its condition. At Philadelphia, Baltimore and Boston, inspections are only made upon request.

In dealing with New York we had a total of 7,638 cars which delivered in the metropolitan area in the year 1947. Of those same 7,638 cars, 5,044 of them arrived in bad condition and that represented 66 per cent of the total cars. The total freight charges on these same cars amounted to $2,638,904.94, and the total claim payments on the 5,044 cars amounted to $1,332,907.87. The claim payments represented 50.5 per cent of the total revenue.

This information appears on my Exhibit No. ——

Mr. Knowlton: Exhibit No. 11 of indentification.

(Respondent's Exhibit No. 11, Witness Hodkinson, marked for indentification.)

The Witness: (Continuing) —which is a summary of the five sheet exhibit which follows.

The Philadelphia figures were obtained from the RPIA as to the number of claim cars, 325, and the revenue for the various roads servicing the area. We went into their records and made a special study of the total cars received at Philadelphia and taken into account during the year 1947, and the total freight charges on those cars.

The same procedure was followed at Baltimore and at [fol. 79] Boston. But at Boston the RPIA records were incomplete. We were only able to cover ten months' claims.

The summary for all of the four points shown appears in the last column of the exhibit.

It will be noted that 41.7 per cent of the total revenue received for the transportation of the 9,656 cars was paid out in claims. The average claim payment per claim car was $274.57 and the average claim payment per car shipped, $149.19.

Exam. Mullen: Mr Hodkinson, what is your average revenue per car shipped? Have you got that?

A. I haven't got it worked out, Mr. Mullen, but it is very easily obtained by dividing Line No. 4 by the total cars in Line No. 1. Mathematically it would be the same, working it out to the revenue per car and the freight claim payment per car. You would still come out with 41.7 per cent.

Exhibit No. 12 is a five-page exhibit.

(Respondent's Exhibit No. 12, Witness Hodkinson, marked for identification.)

Commr. Mitchell: Of course that 41.7 per cent isn't really the complete picture, is it?

The Witness: Yes, that is the complete picture.

Commr. Mitchell: That is only on the amount paid, isn't it?

The Witness: But the revenue is on Line 4.

Commr. Mitchell: Yes, but here you had 66 per cent claims, and you only paid on 50 per cent. There is 16 per cent that [fol. 80] you haven't done anything about yet.

The Witness: No, sir this is a complete picture. I think perhaps you are looking at the difference between the percentage of the cars.

Commr. Mitchell: Well, weren't there some claims filed for this period that weren't paid during this period?

The Witness: No, sir, we followed every claim along. That is the reason we had to take the year 1947.

Commr. Mitchell: I don't know whether I don't understand you or you don't understand me. In other words, this covers the year 1947, doesn't it, New York?

The Witness: Yes. We took the inspection reports——

Commr. Mitchell: So every claim filed for the year 1947 was paid by these railroads in 1947?

The Witness: No.

Commr. Mitchell: Of course that isn't correct.

The Witness: I think perhaps we are at cross purposes. I took every car received in the year 1947, took the claim record and we waited and waited until that claim had been actually paid, until the amount of the payment was included in our figures. That is the reason we had to confine it to the year 1947 because of the length of time it takes to settle some of these claims. We made a comparison of absolute like with like.

Commr. Mitchell: You have 66 per cent of the cars that came in to New York that there were claims against, isn't [fol. 81] that right?

The Witness: Yes.

Commr. Mitchell: And you only paid on 50 per cent, is that right?

The Witness: That is in one case you are comparing cars and in the other case you are comparing claim payment with revenue. They are two unlike things, Mr. Commissioner. We did wait until the claims had been paid.

Commr. Mitchell: You did wait?

The Witness: Yes, it was necessary to keep my account open.

Commr. Mitchell: When did you make this study?

The Witness: We started it very early in 1948, and we found out with whom, what road the claims had been filed.

Commr. Mitchell: When did you complete it?

The Witness: We didn't complete it until early in this year.

Commr. Mitchell: I guess I understand it now. Go ahead.

The Witness: We had to go to every freight claim agent in the country to get this information because claims were not always filed with the delivering line. Many of them were filed with the originating lines, and we investigated with them, and as I say, held the statement open until that information had been received.

By Mr. Knowlton:

Q. Mr. Hodkinson, to your knowledge, and I believe it is your line of work, you know of no place where any one could [fol. 82] go without making a special study such as you have done here and obtain claim payments which followed the cars the way you have done here, is that correct?

A. No, there is no other way in which that could be done.

Q. None of the statistics of the Department of Agriculture or the Commission or any other body, even the railroads, have set up claims in the way you have followed these cars through, is that correct?

A. No, sir, this is a unique study in that it absolutely connects the claim payments with the identical cars on which the revenue accrued.

Commr. Mitchell: Then this exhibit of yours shows, am I right, that in 1947 the railroads paid back in claims 50 per cent of the total freight charges received?

The Witness: That is at New York.

Commr. Mitchell: I am talking about New York.

The Witness: Yes, 50½ per cent.

Commr. Mitchell: That is 50½ per cent?

The Witness: Yes.

By Mr. Knowlton:

Q. Now, could we clarify that just a little? You said in 1947 the railroads paid. They paid on the cars that moved in 1947, although some of the payments were not made until 1948 or 1949, is that correct?

A. That is a clarification of it.

Commr. Mitchell: Well, let's put it this way. They paid [fol. 83] claims of 50 per cent of the total amount received?

The Witness: Yes, of the total amount received.

Commr. Mitchell: Did you report that to this executive committee or whoever you worked for?

The Witness: They have seen this exhibit.

Commr. Mitchell: Whom did you prepare this exhibit for?

The Witness: I prepared it for this particular case.

Commr. Mitchell: At the suggestion of whom?

The Witness: At the suggestion of counsel.

Mr. Knowlton: This was a special study. We didn't know the answer ahead of time and had no way of getting it and prepared it for this investigation.

Commr. Mitchell: You should have known a long while ago that you were paying back 50 per cent of your total receipts in claims.

All right. Go ahead.

The Witness: The five-page exhibit, Exhibit No. 12, shows in more detail the claim payments, and that has been separated as to the type of case in which the cars were transported. This only goes to the claim cars.

At New York the fibre boxes slightly exceeded the wood boxes.

At Philadelphia the preponderance of the claim payments were in connection with eggs that moved in fibre cases.

At Baltimore we have the reverse of the situation.

[fol. 84] At Boston the wood cases seemed to be more prolific than the fibre cases.

I have broken down the claims at the bottom of the first sheet of this exhibit to show the broken, the leakers, the cracks and the stained.

Pages 2 to 5 give similar information for the cities of Philadelphia, Baltimore and Boston.

My Exhibit No. 13 is a two-page exhibit which compares the claim payments and the freight revenue.

(Respondent's Exhibit No. 13, Witness Hodkinson, marked for identification.)

It should be pointed out, however, that the claim payments in 1940 were not confined to the shipments that moved in 1940. They cover claims that had been filed in connection with shipments moving in years prior to 1940.

This exhibit, however, does show the trend. It will be noted from page 2 that for all the eastern carriers in 1940

the total claim payments represented 2.52 per cent of the revenue but in 1947 the claim payments had increased to such an extent that they then constituted 38.41 per cent of the revenue.

Commr. Mitchell: Where did you get those figures?

The Witness: The last figure is from the freight claims agents of the AAR reports and the claim report is the carrier's report to the Interstate Commerce Commission. That is on page 2 of the exhibit.

[fol. 85] Exam. Mullen: Exhibit No. 13?

The Witness: Yes, sir.

By Mr. Knowlton:

Q. I believe that covers the exhibits dealing with the claim situation, does it not?

A. Yes, sir.

Q. Have you prepared a small study going into the prices of eggs?

A. Yes, sir, we prepared such a study by months for the years 1939 to 1948, inclusive. These figures are transcribed from the daily and monthly statistical records of the Urner-Barry Company.

Mr. Knowlton: May we identify this two-page exhibit as Exhibit No. 14?

Commr. Mitchell: Mark it as Exhibit No. 14.

(Respondent's Exhibit No. 14, Witness Hodkinson, marked for identification.)

The Witness: These people issue the "Producers Price-Current," and that is recognized as an authoritative source for prices, and it is the price that the RPIA and I think the trade uses in connection with claims on eggs.

By Mr. Knowlton:

Q. That is at New York?

A. That is at New York. The low in 1939 was $17.51, and the low in 1948 was $49.22. That represents an increase in price of 181.1 per cent.

The high value in 1939 was 29.20 cents per dozen and the [fol. 86] high price in 1948 was 70.95 cents per dozen. That

represents an increase in price, high 1939 and high 1948, of 143 per cent.

Now, taking the extremes from the low of 17.51 cents per dozen in 1939 to the high of 70.95 cents in 1948, we have a percentage increase of 305.2 per cent.

This might be contrasted with the increase in freight rates. I have taken an assumed rate of $1.00 from Western Trunk Line territory to Official Territory and have subjected that to the increases under Ex Parte 123, 148, 162 and 166 and 166-A, and we come out with a rate of $1.63.

So the freight rate has increased 63 per cent as against an increase in value of eggs of 305.2 per cent from the low to the high, or 181.1 per cent, the two lows for 1939 and 1948, or 143 per cent from the high value of 1938 to 1948.

Q. Do you have anything else?

A. No, sir, that is all I have.

Mr. Knowlton: Cross examine.

Cross-examination:

By Mr. Matson:

Q. Mr. Hodkinson, are Exhibit 11 and your other exhibits submitted in justification of the schedules under investigation in this proceeding?

A. They are submitted here for the information of the Commission.

Q. Did you conclude as a result of your extensive investigation of this 1947 claim experience that there is an excessive [fol. 87] number of claims filed in respect of cars terminating in New York?

A. Well, the exhibit shows there are more claims filed in New York than there are at other points.

Q. I can read the figures. I want to know your conclusion.

Is that excessive or isn't it?

A. Let's put it that New York seems to be——

Commr. Mitchell: Can you answer the question? Look at these figures and answer the question if you can. If you can't, say so.

The Witness: I think Mr. Matson is trying to put words in my mouth, Mr. Commissioner.

Commr. Mitchell: Mr. Matson is asking you a fair question as shown by your figures and you ought to answer it.

The Witness: I think the answer is obviously that there are more claims filed at New York than at the other points.

By Mr. Matson:

Q. I agree it is *do*vious that there are more there. The figures speak for themselves. I want to know——

A. As to whether or not they are excessive, I don't understand that we are paying claims blindly, and those claims wouldn't be paid if there wasn't evidence of damage.

Commr. Mitchell: Are you saying to the Commission now that in your judgment as a railroad man this exhibit doesn't show that there are excessive claims in New York?

The Witness: Well, I am using excessive in the sense, Mr. Commissioner, that they are unjustified claims.

[fol. 88] Commr. Mitchell: I don't think that is what he asked you at all.

The Witness: If he means simply by numbers my answer is obviously yes, but if he wants to create the inference——

Commr. Mitchell: Is there any question in your mind but that there is an excessive amount of claims being paid in New York City?

The Witness: As to numbers, no, there is no question in my mind.

Commr. Mitchell: As to amounts, as to the total amounts as against the——

The Witness: I think the claims are altogether too high in relation to——

Commr. Mitchell: That is what you ought to say. I don't know why the railroads should hesitate. This is so evident that a blind man could see it.

The Witness: I have to be careful of the inference, Mr. Commissioner, that we are not paying claims——

Commr. Mitchell: You answer questions fairly and don't try to dodge them.

The Witness: I have had experience with Mr. Matson before.

By Mr. Matson:

Q. I have always treated you fairly, haven't I?

Commr. Mitchell: I think Mr. Matson is completely right in this matter. I don't know about your experience before. Go ahead, Mr. Matson.

[fol. 89] By Mr. Matson:

Q. Have I ever treated you unfairly, Mr. Hodkinson?

A. Well, I will say that you have always tried to get a fair advantage.

Q. Now, I would just like to know what the railroads have done about this other than try to pass some of that back to the American farmer?

A. I don't know what we have done, Mr. Matson. I can't answer that question.

Q. Do you think that there is a claim racket in New York?

A. I think New York is more claim conscious than any other section of the country.

Q. I am using the words found in the reply to the petition filed on July 12, 1948, the words used by Mr. Dumas, Mr. Boyle and Mr. Green. They suggest there is a claim racket there.

Commr. Mitchell: Who filed that, Mr. Matson?

Mr. Matson: It is filed on behalf of the Consolidated Classification Committee. It is a reply to our request for suspension of the schedules now under investigation. There are some very pointed suggestions in there, that there is a claim racket in New York.

I would like to ask this witness whether he believes there is a claim racket in New York.

The Witness: I don't know. I haven't done any investigation along those lines. I am just reporting the figures as [fol. 90] they come to me without anything that underlies them.

By Mr. Matson:

Q. That is the extent of your testimony today, to present these figures here?

A. Yes.

Q. In spite of the fact that you spent a year collecting these and investigating the claim experience of the New York railroads?

A. I wasn't investigating the claim experience. I was just asking for the claim payments. I didn't examine any of these claims as to their merits.

Q. Do you know whether the New York railroads have engaged investigators, detectives or any one to look into this alleged claim racket?

A. No, I don't.

Mr. McDonald: Mr. Commissioner, I submit that there hasn't been any testimony as yet as to any racket. There has been nothing but statements by counsel and the witness has already testified that all he has done in connection with his testimony here is to assemble——

Mr. Morken: Well, Mr. Commissioner——

Commr. Mitchell: Just a minute now. You haven't any right to speak up now.

Mr. Matson: I have no further questions, Mr. Commissioner.

Mr. McDonald: That is all.

Commr. Mitchell: Is there any further question?

[fol. 91] Mr. Morken: I have just one.

By Mr. Morken:

Q. Mr. Hodkinson, did you hear Mr. Mullen testify here this morning?

Exam. Mullen: You mean Murphy.

The Witness: Murphy.

Mr. Morken: Murphy, yes.

The Witness: Yes, I heard him testify.

By Mr. Morken:

Q. Did you hear him testify that the claim situation had not improved or changed since this rule was put into effect in July of 1948?

A. I can't recall that he said anything quite as baldly as that.

Q. Did you make any check of your records before you came here to see if this proposed rule, or the rule under

discussion, that became effective in July of 1948, did you make the investigation to determine if it had improved the situation?

A. No, I did not.

Q. Do you know?

A. I don't know.

Mr. Morken: Thank you.

Commr. Mitchell: Is there any further cross examination?

Mr. Blanchard: I have a question or two.

By Mr. Blanchard:

Q. Mr. Hodkinson, you have shown a situation at New York, Philadelphia, Baltimore and Boston. What is the situation at Syracuse or Albany, New York? They are served by the lines that you represent, are they not?

[fol. 92] A. Yes. I don't know, Mr. Blanchard. We didn't take that into our survey.

Q. Did you check any other destination except the four named here?

A. Only the four named here which we have supplemented by showing the system on Exhibit 13. Of course, Exhibit 13 deals with it in a different way. I think it would be fair to state that the experience at points other than New York, Philadelphia, Baltimore and Boston might be more indicative of the situation at Syracuse and Rochester and Buffalo.

Q. That is, you think New York stands out rather by itself?

A. Oh, yes, there is no question about that.

Q. You are here proposing certain changes in the classification. It is true, is it not, as shown by Mr. North, that primarily you had different classification rules in effect at New York than you had at Syracuse and Albany and so forth?

A. I am not sure. I haven't looked into it.

Q. Did you hear Mr. North's testimony?

A. I am sorry, I wasn't following it that closely.

Q. Well, assume that the record shows that in the past different classification rules applied governing settlement

of claims in New York than applied elsewhere in the eastern district.

Is it your opinion that this exhibit of yours shows that again different rules might properly be applied at New [fol. 93] York than applied elsewhere in the eastern district?

A. Well, this exhibit of mine would seem to call for more stringent rules at New York than we have at the other places.

Q. You say that the situation reflected here at Philadelphia, Baltimore and Boston is far more typical of the situation at other eastern destinations such as Syracuse and Albany?

A. That is right.

Mr. Blanchard: That is all.

Commr. Mitchell: Any further cross examination?

By Mr. Staley:

Q. Mr. Hodkinson, your Exhibit No. 11 is set up on the basis of showing movements of certain shipments and then showing payments of claims with respect to those identical shipments, is that correct?

A. That is right.

Q. Is your Exhibit No. 13 on that basis also?

A. No, I explained that Exhibit No. 13 did not compare like with like, that the claim payments might belong to previous years. The claim payments for 1940 would cover some 1939 and perhaps some 1938 shipments.

Mr. Staley: That is all.

Commr. Mitchell: If I have figured this correctly, Mr. Hodkinson, the average revenue per car into New York in 1947 was $345.00.

Mr. Blanchard: That is what I got.

Commr. Mitchell: Mr. Blanchard says that is what he got. [fol. 94] Now, then, your average claim per car to New York in 1947 was $174.00?

The Witness: That is per car shipped.

Commr. Mitchell: That is per car shipped. So the railroads received $171.00 average revenue per car for 1937?

The Witness: Somewhat less than that.

Commr. Mitchell: Somewhat less than that?

The Witness: Yes. You had a figure of what, Mr. Commissioner?

Commr. Mitchell: Beg pardon?

The Witness: You had a figure of what, $300——

Mr. Blanchard: $345.00.

Commr. Mitchell: $345.00. I left the cents off.

Mr. Blanchard: About $171.00 left of revenue, knocking the cents off.

Mr. McDonald: Net.

The Witness: Net.

Commr. Mitchell: I haven't the exact figures into Philadelphia. You received somewhere around $300 per car?

The Witness: Yes. We got more net revenue at Philadelphia, Baltimore and Boston than we did at New York.

Commr. Mitchell: You don't know what the railroads have done to correct this situation?

The Witness: No, sir, I don't.

Commr. Mitchell: You have nothing to do with that?

The Witness: I know that Mr. Jensen——

[fol. 95] Commr. Mitchell: I assume that you will have witnesses to show what you are trying to do?

Mr. Knowlton: The next witness is going into these things, and I have tried not to object to the questions asked of this witness. Let him testify as to what he knows.

Mr. Blanchard: Mr. Commissioner, I would like to observe that the Philadelphia revenue was over $400 per car, not $345, in spite of which they had lesser claims per car.

May I ask one more question, bringing out the idea a little further?

Commr. Mitchell: Go ahead.

By Mr. Blanchard:

Q. Mr. Hodkinson, would this be a fair summary of the situation shown by your exhibit at New York; you had twenty-five hundred cars out of a total of seventy-two hundred on which you earned the full revenue per car without deduction?

A. That is correct.

Q. On the other five thousand cars your net was $81.00 a car?

A. Yes.

Mr. Blanchard: That is all.

Commr. Mitchell: I don't know whether I understood your exact position with the railroads. Are you in an executive position where part of your job is to try to correct this situation?

It must have even startled the railroad officials.

[fol. 96] The Witness: No, sir, I am not quite in that position, but I have called the attention of the chairman of the Eastern Traffic Executives Association to this showing. We only completed the figure the other day and I feel sure that he is going to take the necessary steps in conjunction with the RPIA to correct it.

I understand that they had a meeting only recently, Mr. Fitzpatrick and various other people, dealing with this egg situation.

Commr. Mitchell: Of course, we are now talking about back in 1947, that is two years ago, and you are now asking for an increase in rates with a showing of this kind. I suppose you are not the man to ask about it. You have another witness, Mr. Knowlton?

Mr. Knowlton: Yes. I would like to offer Exhibits 11, 12, 13 and 14 before Mr. Hodkinson leaves.

Commr. Mitchell: Is there objection to the exhibits?

(No response.)

Commr. Mitchell: They will be admitted.

(Respondent's Exhibits Nos. 11 through 14, inclusive, Witness Hodkinson, received in evidence.)

Commr. Mitchell: That is all. Thank you.

(Witness excused.)

Mr. Knowlton: I will call Mr. Jensen.

[fol. 97] WALTER S. JENSEN was sworn and testified as follows:

Direct examination.

By Mr. Knowlton:

Q. Mr. Jensen, give your name to the reporter and your address and state what your position is with the railroads.

A. Walter S. Jensen, 143 Liberty Street, New York 6, New York. I am manager of the Railroad Perishable Inspection Agency.

Exam. Mullen: What agency?

The Witness: Railroad Perishable Inspection Agency.

By Mr. Knowlton:

Q. Is one of the duties of the Railroad Perishable Inspection Agency to look into damage to eggs?

A. That is correct.

Q. If there is no objection I would like to have you proceed to tell the Commissioner what you have found.

A. The destination inspection records of the Railroad Perishable Inspection Agency on shell eggs transported by rail and unloaded in our territory in 1947 show damage of record of approximately three and one-half million dozen broken, leakers, cracked and stained.

The corresponding record for the year 1948 approximates one million seven hundred and fifty thousand dozen and for the first six months of 1949 about six hundred thousand dozen.

Damage of this magnitude verified by the railroad authorized inspection representatives is naturally reflected in [fol. 98] the claim experience of the railroads who handle these eggs from point of origin to destination.

Since most of these eggs are delivered at New York City and since most of the receivers of these eggs at New York are well versed in the claim potentialities of this damage the focal point of interest in any study or research on shell damage to eggs in rail transportation is bound to be New York City.

New York is the largest destination market in the country

for eggs. Its market demand is for the best quality. Its distribution facilities are so complete that carload eggs assembled from a variety of packing sources, namely, the so-called "Consolidated cars" as well as straight cars from a single packing plant can be handled to good advantage.

The procedure for determining the nature and extent of damage for all destination markets in RPIA territory is the same. It is set up in the Classification, but whether or not all of its provisions relative to damage are followed, depends on the consignee, many of whom, especially outside of New York City are willing to accept the car as good order even though it contains some damage.

The twenty-case inspection rule is the essential first step in the determination of damage. The consignee who is not willing to accept his car of eggs as good order must arrange with the RPIA for joint inspection of twenty cases which are chosen by the consignee for the purpose of ascertaining damage by inspection of the top layer [fol. 99] of eggs in each of these cases.

If no shell damage is found, or if the consignee believes whatever damage is found is of minor importance, he accepts the entire car as good order without any further negotiation with the carrier relative to damage.

If, however, damage is found in one or more of these twenty cases the consignee can decide to continue his search for damage, but with the distinct understanding that only those cases in which he finds damage may be set aside for further joint inspection with the RPIA for determination of the nature and extent of damage.

After this segregation of cases said to contain damage is completed the joint inspection is arranged promptly at the mutual convenience of the consignee and the RPIA. The nature and extent of damage, the amount of labor in man-hours, and the amount of material used in the repacking of the cases containing damaged eggs, is under the supervision of the RPIA agreed upon and covered by an appropriate joint report signed by the consignee or his representative and a representative of the RPIA.

At New York an additional option is available to the consignee. To expedite the handling of cases of eggs con-

taining damage a case agreement has been devised to cover the cost of labor and material used in reconditioning a case.

At the present time 40 cents per case is the allowance for [fol. 100] labor and material plus the amount of damage found in the case in the joint inspection. The direct labor method is generally used. The labor expense of lifting lids of cases which showed no damage is not recognized as a potential claim item.

The operation of the twenty-case inspection plan therefore comprises two parts: First the ascertainment of damage which limits the search to the twenty cases chosen by the consignee and it is highly improbably that none of the twenty cases will show no damage to the top layer of eggs in the case; and second, the verification of damage in all cases set aside because damage is found.

This twenty-case inspection rule became effective at New York on February 10th, 1941. Prior to that date only the damage in the cases showing external evidence of damage—see Mr. North's tariff, Exhibit No. 10, for full details—was recognized by the carrier in damage notations and considered worthy of consideration in the determination of the extent of carrier liability. This limitation is, in my opinion, reasonable because the cases of eggs showing no external evidence of damage to the case or its contents at time of delivery by the carrier at destination market is being delivered in the same apparent good condition as when received by the carrier at the time it was loaded into the car by the shipper's representative.

During the year 1947 at New York 5,944 cars containing eggs were inspected by the RPIA at piers and stations. [fol. 101] 1,447 of these cars were accepted by the consignees as in good order, the other 4,497 cars contained damage which the consignee believed was chargeable to transportation handling by the railroads.

An outstanding fact in connection with the verified damage in these cars, namely, more than two million six hundred thousand dozens is that 79 per cent of all the egg cases which contained damaged eggs at time of destination inspection showed no external evidence of such damage.

Although the tariff rules in respect to the ascertainment

and verification of damage and the measure of carrier's liability have been the same at all destination markets in RPIA territory since February 10, 1941, the options granted by the tariff have until recently been exploited on a technical basis only by certain receivers of the New York market.

Actually the finding of one cracked egg in the top layer of one of the first twenty cases inspected authorizes the consignee to lift the lids on every other case in his lot or carload. Some consignees have taken full advantage of this privilege, but many have not.

The technical procedure accounts in part for the greater damage verified at New York and the corresponding higher claim payments. In order to keep these technical practices within reasonable bounds a refinement of inspection procedure and a change in the preparation of damage notations [fol. 102] was made at New York effective January 12, 1948. Verification of damage by count of every shell damaged egg in the cases set aside by the consignee for joint inspection with the RPIA inspector produced a damage record of maximum accuracy.

Damage notation transactions with the consignee of record only simplified the operation in contrast with the prior established custom of dealing individually with a number of so-called "sub-consignees" on consolidated cars of eggs billed to a third party, the consignee of record, who merely acted as the truck hauling representative of the shipper or ultimate receiver of the eggs.

The first results of this January 12th plan was reduction in the damage of record undoubtedly induced by the sub-consignee's new decision to accept minor damage as normal expectancy.

Another outstanding item which directly affects the outturn of damage at destination and which has an even more significant effect on the claim status of damage is the accuracy of the description of the eggs by the shipper.

From the standpoint of rail transportation there are only two kinds of shell eggs; One, the shipment in which there are no broken, cracked, leakers, or stained eggs; and two, the shipment in which there still remains some broken, cracked, leakers or stained eggs at the time they are tendered to the railroad for transportation.

[fol. 103] From a commercial standpoint the first group are known as "storage packed eggs" or "rehandled and repacked eggs," and the second group is known as "current receipts."

The term "current receipts" was originally applied to a sort of run-of-the-nest kind of egg including dirty as well as shell fractured eggs. This type of egg has long been subject to the 5 per cent breakage tolerance rule in the handling of claims.

Prior to April 26, 1946, the terms "storage packed" and "rehandled and repacked," particularly the latter, was interpreted to mean that the eggs had actually been rehandled and repacked in conformity with Classification requirements at the actual point of rail shipment and such rehandling and repacking had been done just prior to shipment.

Many cars of eggs billed as "rehandled and repacked" did not actually comply with one or both of the above requirements and, therefore, were subject to the 5 per cent breakage tolerance rule. As a result there was a large accumulation or backlog of claims in the early part of 1946 because the claimants refused to agree to settlement on the 5 per cent basis.

The meaning of "rehandled and repacked" was clarified as of April 26, 1946, by an interpretation that the time and place of rehandling and repacking did not change their status as "rehandled and repacked" to "current receipts" and make them subject to the 5 per cent rule.

[fol. 104] Many shippers of eggs which are placed in the cases in which they are shipped at points distant from the point of rail shipment, such as farm kitchens, cellars, henneries, et cetera, seized upon this interpretation of "rehandled and repacked" as a proper description for their eggs, because their eggs had been handled several times between nest and shipping case, and finally were packed in the shipping case.

The need, therefore, still remained for clarification of the two main transportation types of eggs. The efforts in this direction culminated in Supplement No. 2 to CFC #18 effective July 24, 1948, which in effect says that all cases of eggs from which all shell damage has not been removed at point of origin of rail shipment are "graded" or "current re-

ceipt" eggs and are subject to the 5 per cent breakage tolerance rule.

Since July 24, 1948, all eggs known to have been hauled from distant points to the point of origin of rail shipment are considered to be disqualified as "storage packed" or "rehandled and repacked" and in the event of claim are considered to be subject to the 5 per cent rule.

One result of this change in the Classification has been an increased tendency to use truck transportation from points in Indiana, Iowa and Minnesota to eastern destination markets.

Normal expectancy of shell damage to eggs is sound. Our findings at rail shipping points in the course of making inspections similar to those which are made by the consignee [fol. 105] at destination under the tariff option discloses that there is shell damage of one kind or another in every car regardless of whether or not the eggs have just been rehandled and repacked or have been hauled over the highways various distances before loading in the rail freight car.

For instance our research can be summed up as follows:

Indiana	—1947	74 cars—2.2% shell damage
Indiana	—1948	30 cars—3.2% shell damage
Indiana	—December 4, 1948 to February 19, 1949	22 cars—2.8% shell damage
Iowa	—1947	2.57% shell damage
Iowa	—1948	2.46% shell damage
Minnesota	—1947	1.81% shell damage
Minnesota	—1948	3.84% shell damage

In a recent study an analysis of 1,002 inspection certificates of the USDA reporting the results of their inspections made at shipping point reveals a similar situation. 18,437 cases of the eggs shipped in these 1,002 cars were examined with the following results:

3.04 per cent of the natural eggs were found to be checked and/or stained;

3.22 per cent of the processed eggs were found to be cracked and/or stained before rail transportation started.

The USDA findings corroborate our own conclusions based on our observations that the processing operation is responsible by itself for some shell damage.

[fol. 106] Our activities at shipping point indicate that this shell damage before rail transportation is chargeable to the following factors in order of their importance:

First, the fragile nature of eggs. It is generally conceded by all parties acquainted with the commercial handling of eggs that a certain amount of shell damage is inescapable. It is to be expected. This normal expectancy of damage starts at the nest and, dependent upon the strength of the individual shell, continues progressively until the egg is used by the consumer.

Second, handling of the eggs in the candling and repacking operations. We have noticed that checks develop in the oil-dip processing of the eggs, and occasionally an egg is broken when the egg case is lidded.

Third, handling of the packed egg cases to the car and in the loading of the car. We have found that very often there is no supervision of the handling of the packed cases in the car. Sometimes unskilled or itinerant labor is used to load the car apparently without any previous training and with no supervision or interest on the part of the owner of the eggs in promoting careful and proper loading.

In contrast the watchfulness and care of some shippers to and including the last phases of good loading are reflected and justified by the good out-turn characteristics of their cars.

In setting up the grades of eggs the U. S. Department of [fol. 107] Agriculture with the trade have adopted the normal expectancy idea and permit certain amounts and certain kinds of shell damage under each grade, the amount varying according to the grade. This recognition of normal expectancy can be summarized as follows:

Shell Damage Permitted Under USDA Grade Specifications

Consumer Grades

	Shell Damage	Leakers	Checks or Stained	Stained
AA	5%	½%	4½%	
A	5%	½%	4½%	
B	20%	1.2%	9½%	10%
C	100%	1%	19%	80%

	Wholesale Grades			
	Broken (Loss)	Checks or Stained	Checks	Stained
Specials	1.7% (6 eggs)	7.5% (27 eggs)		
Extras	2.2% (8 eggs)	11.7% (42 eggs)		
Standards	2.8% (10 eggs)		11.7% (42 eggs)	40% (144 eggs)

Grade recognition of normal expectancy plus the shipping point findings referred to above demonstrate conclusively that eggs cannot even be packed in approved shipping containers under commercial conditions without some shell damage and this situation prevails before any transportation service of any kind occurs.

[fol. 108] Another factor which has contributed to the rising cost of claims for the railroads on New York City deliveries is the increasing cost of labor used for reconditioning cases which contain damaged eggs. The hourly rate of labor used for reconditioning has increased as follows:

Prior to	April 1st, 1940	$1.00 per hour
Effective	April 1st, 1940	1.25 per hour
Effective	April 3rd, 1944	1.50 per hour
Effective	February 11th, 1946	1.69 per hour
Effective	February 15th, 1948	1.85 per hour

In addition, we are now being asked to accept an additional 50 cents per day per man expense to take care of the assessed contribution of the union for welfare purposes. The cost of labor and materials for reconditioning on the case basis have shown some corresponding increases as follows:

Prior to	April 3rd, 1944	20 cents per case
Effective	April 3rd, 1944	30 cents per case
Effective	February 11th, 1946	40 cents per case

Warehouse charges for handling damaged cases have also shown a similar increased expense:

Effective	April 1st, 1940	3 cents per case
Effective	January 1st, 1947	4 cents per case
Effective	June 1st, 1947	6 cents per case

The type of case used, including the mixture of cases of various types in the same car, and the destination market

[fol. 109] value of eggs, are two other factors influencing the claim situation, but the verified damage in eggs delivered at New York still continues to be the key to the situation.

The fundamental cause of this damage is closely identified with the internal packing of the eggs in the case. The objective of most poultry breeders has been, and probably still is, to produce more and larger eggs. The diameter of the filler cell to receive the egg has remained the same but the egg is larger than it was when the design of the filler was first developed. Most of our egg damage is on the side of the egg. Eight to eighty-five per cent of the cases that have damage show no external evidence of damage.

Therefore, it is obvious that one of the most important direct causes of damage to shell eggs is that the egg fits too tightly in the filler.

The solution, either in the direction of strengthening the shell of the egg, changing the size of the egg, or redesigning the filler in which it is packed, is one which challenges the experts of the industry and those in the United States Department of Agriculture to whom such matters have been delegated for development at public expense.

By Mr. Knowlton:

Q. Does that complete your statement on direct, Mr. Jensen?

A. Yes, sir.

Commr. Mitchell: That finishes the direct examination?

[fol. 110] Mr. Knowlton: Yes.

[fol. 111] Afternoon Session

2:00 p. m.

Commr. Mitchell: The hearing will come to order, please.

WALTER S. JENSEN resumed the stand and testified further as follows:

Commr. Mitchell: Are you through with this witness, Mr. Knowlton?

Mr. Knowlton: I think I am for the time being. We are ready for cross examination.

Cross-examination.

By Mr. Matson:

Q. Mr. Jensen, at how many points do you perform inspection service in the New York area? That is, what is the scope of these inspection-? Do you understand the question, Mr. Jensen? I would like to have you specify the points in the New York area where these inspections by the RPIA take place?

A. Well, in the first place we perform the inspection service wherever it is required in the New York metropolitan area. That means wherever carload eggs are unloaded.

Q. Now, the D. L. & W. has a pier. That is No. 13, isn't it?

A. That is right.

Q. And Erie Pier No. 20?

A. That is right.

Q. And B. & O. Pier 22?

A. That is right.

[fol. 112] Q. And Pennsylvania Railroad Pier 28?

A. 27, 8 and 9.

Q. They are right along together, aren't they?

A. Yes.

Q. And how about Lehigh Valley?

A. Their pier is 38.

Q. And New York Central?

A. New York Central deliveries are at other places than piers, like St. John's Park and 30th Street, and 130th Street, Westchester Avenue, and places like that.

Q. About how many different locations?

A. In the New York area?

Q. For the New York Central?

A. I don't know.

Q. Well, how many locations would you have altogether in New York area?

A. You mean the New York metropolitan area?

Q. Yes?

A. Oh, possibly 30 or 40.

Q. Thirty or 40 different locations?

A. That isn't an exact figure. That is just rough.

Q. Now, that area extends over into Jersey, doesn't it?

A. It includes Newark, New Jersey, yes.

Q. And Brooklyn?

A. Brooklyn, the Bronx. The area commonly known as. [fol. 113] the New York City metropolitan area.

Q. I see. Do you go way out on Long Island?

A. Yes.

Q. About how far out do you go?

A. Well, if we got a call 50 miles out we cover it.

Commr. Mitchell: Pardon me, but the railroads only unload the cars in New York City proper, don't they? They don't unload the cars themselves in New Jersey, do they?

The Witness: No, just on the piers.

Commr. Mitchell: Just on the piers?

The Witness: That is where the railroad performs the unloading.

Commr. Mitchell: That is what I thought.

Mr. Matson: I was talking of the inspection service.

Commr. Mitchell: I know that, but I wanted to make sure that that is when they inspect other cars than those which the railroads unload.

By Mr. Matson:

Q. Now, how many inspectors do you have under your jurisdiction which do this work, how many egg men?

A. In New York City?

Q. Yes, in this area, the same area?

A. Oh, from 11 to 15 or 18, somewhere along in there.

Q. How many do you have right now?

A. Assigned to eggs?

Q. Yes?

[fol. 114] A. Well, we assign as many as are required. Now, that varies. It may be right today. It might be 12 next week.

Q. Do the same men inspect fruits and vegetables?

A. No, sir.

Q. What other commodities do they inspect?

A. These 11 men?

Q. Yes?

A. They are specialists in eggs.

Q. Well, when you need 20 men, where do you get the other nine men?

A. We haven't needed 20, but we have needed maybe 15, 16.

Q. Well, do you have them on call? Where do you get them from?

A. Well, that is a long, long story. That involves all our union agreements and everything else. We have got to use men in the way our labor agreements provide. We would hire new men if we needed 20.

Q. Yes. Well, does the necessity fluctuate from day to day?

A. No, sir.

Q. You could run along with 12 men for maybe a week and then the following week you would need 13 or 14 men?

A. We might get along with 12 for a year.

Q. I see. And how many do you have this year?

A. I don't know. I would have to get the payroll out.

Q. You don't know how many egg men you have under your jurisdiction today?

[fol. 115] A. Eleven to 15 or 18, yes. That is as close as I can give you the information now.

Q. How many did you have last year?

A. I don't have my payrolls with me so I can't tell you.

Q. I would like to have that information for 19——

Commr. Mitchell: Well, can't you give him within—you ought to be able to tell within——

The Witness: Less than 19.

Commr. Mitchell: Less than 19?

The Witness: Anywhere from 10 or 11 up to 19.

By Mr. Matson:

Q. And in 1947, how many did you have?

A. The same.

Q. About the same number?

A. Yes.

Mr. Matson: I would like to have a little more accurate information on that, if the Commission please.

Mr. Knowlton: What is the purpose of this?

Commr. Mitchell: Oh, I suppose he wants to show your force. That will be no difficulty for you to show that, will it?

Mr. Knowlton: Well, we can get it, but I don't see that it is pertinent. Can't he tell us why it is pertinent?

Mr. Matson: I would like to show the relationship between the number of men that you have available to inspect cars and the number of places where they will have to go and the number of cars you have to inspect.

[fol. 116] Mr. Knowlton: I don't see that that is at all material if we have sufficient men to conduct the inspections.

Commr. Mitchell: Well, do you have sufficient? That is what he wants to find out. I think it is pertinent. You certainly ought to have no trouble, the railroads shouldn't object at all to furnishing that information.

Mr. Knowlton: We don't object.

Commr. Mitchell: Well, then, furnish it.

Mr. Knowlton: Mr. Jensen, will you endeavor to supply that to the Commission?

The Witness: We can develop that.

Commr. Mitchell: The question, I suppose, is whether or not you have an adequate force to properly inspect each car, and I think that is very material in this case.

Mr. Knowlton: Can't we ask the witness that question? He is the one——

Comm. Mitchell: The witness has just given us his judgment, which is anywhere from 11 to 18.

Mr. Knowlton: May I ask the witness if you have sufficient men to perform all inspections?

The Witness: We do.

Commr. Mitchell: Why, I think that is just his opinion.

Mr. Johns: That is a conclusion.

Commr. Mitchell: I think the department is entitled to [fol. 117] ask whether it is sufficient; if you please.

Mr. Matson: If the Commission please, I would like to have this information from 1940 on up to the present year. If it isn't too hard to get.

The Witness: I can't supply it for anything prior to January 1, 1946.

Commr. Mitchell: Well, if that is the best you can do that will give you a matter——

By Mr. Matson:

Q. Is that the date you took over?

A. That is right.

Q. Were the records for your office destroyed when you were installed?

A. For whose office?

Q. The office that you have now? Wasn't it in existence before you took the job?

A. Our predecessor probably has the records, yes.

Q. I should think you could get that information from him.

Commr. Mitchell: Well, if he gets you the information for those years, Mr. Matson, that will give it to you. Those are the main years, 1946, 1947 and 1948, anyhow.

Mr. Matson: I think 1944 and 1945 are important, too.

Commr. Mitchell: Well, if you can secure it I think you ought to do it.

Mr. Knowlton: We will try and get that other information if we can. We will supply that, too.

[fol. 118] Commr. Mitchell: All right.

Mr. McDonald: When do you want that information, Mr. Matson, what years?

Mr. Matson: 1944 on to 1948.

Mr. McDonald: We will be glad to make every effort to get you what you want.

Mr. Matson: Thank you.

By Mr. Matson:

Q. I notice in your prepared statement that you have emphasized in a number of places that the damage has been verified by the RPIA representatives. In all instances the claims reflected on Mr. Hodkinson's Exhibits 11 to 13, inclusive have been verified by your employees?

A. That is right.

Commr. Mitchell: Pardon me. Did you, Mr. Knowlton, introduce those exhibits, or were they just identified?

Mr. Knowlton: They were just identified until after cross examination.

Commr. Mitchell: Do you intend to offer them later on?

Mr. Knowlton: The other exhibits were in. Mr. Jensen hasn't any exhibits yet.

Commr. Mitchell: I am talking about 11 to 13.

Mr. McDonald: He offered those.

Mr. Knowlton: They were offered.

Commr. Mitchell: Were they?

Mr. Knowlton: Yes.

[fol. 119] Commr. Mitchell: All right.

By Mr. Matson:

Q. In view of that what is your opinion as to the existence of an egg claim racket in New York? Does it or does it not exist?

Mr. McDonald: Mr. Commissioner, I think before the witness answers that question we ought to have a clear understanding about what Mr. Matson means by the word "racket" or what his definition of it is. I don't think the witness used it on his direct examination.

Mr. Matson: I am using the word as used in the reply of the Consolidated Classification Committee dated July 12, 1948 which Mr. Jensen, I am sure, is familiar with. Much of the language in that is included in his testimony today.

Mr. McDonald: Are you familiar with that report referred to, Mr. Jensen?

The Witness: I have read it, yes.

Commr. Mitchell: Well, if he knows, why he can answer. If he knows what a racket is or not he can answer. If he doesn't he can say so.

The Witness: If I can use my own meaning, my own interpretation of the word "racket," my answer is there is no claim racket in New York City, except within the framework of the rules and regulations that govern the ascertainment, determination and verification of damage.

By Mr. Matson:

Q. Do you mean to say that there is no dishonesty in the [fol. 120] dealings in New York City by the egg receivers?

A. You are covering a wider field than I am acquainted with.

Q. Well, tell us what you mean?

A. Mean by what?

Q. When you say there is no egg claim racket in New York?

A. The claims are for damage that has been verified in accordance with the rules and regulations covering the ascertainment and determination of damage, and the claims are in accordance with that damage. Therefore, it is not a racket in the ordinary sense and meaning of the word "racket."

Q. Is it your view that the damage reflected in Mr. Hodkinson's exhibits is damage entirely caused by the railroads in transit, or does it include damage which occurred before the cars were tendered to the railroads?

A. It includes all verified damage to which the consignees have taken exception that has occurred from the time the egg is laid until it reaches the point of inspection.

Q. Am I to understand, then, that part of this damage is damage for which you do not think you are responsible?

A. Definitely, yes.

Q. And yet you have verified the damage?

A. Certainly.

Q. On page 1 of your prepared statement you say New York is the largest destination market in the country for eggs and then you say its market demand is for the best [fol. 121] quality. Do you mean to imply by that, that eggs of less than the top quality are not in demand in New York?

A. No, sir.

Q. Would you agree that eggs of all qualities are in demand in New York?

A. I think so, yes.

Q. Are any current receipts received in New York?

A. Any what?

Q. Current receipts?

A. No, sir, if you mean, as billed.

Exam. Mullen: Do you mind reading that question, please.

(The question was read by the reporter.)

Exam. Mullen: What do you mean by that?

The Witness: As shown on the bill of lading. As described by the shipper on the bill of lading.

Exam. Mullen: How are they described?

The Witness: Either as storage packed, rehandled and repacked or graded.

Exam. Mullen: Graded, as I understand from your description here, includes current receipts?

The Witness: It is a synonym for current receipts from that standpoint.

Exam. Mullen: When you use the word "graded" does that include current receipts?

[fol. 122] The Witness: Actually, I think there are no true current receipts shipped.

Exam. Mullen: Do you get many shipments under the bill of lading designation of "graded"? Is that it?

The Witness: Under the July 24, 1948 rule, if there were any current receipts they would be billed as current receipts, but they could be billed as graded eggs.

Exam. Mullen: Do you receive any shipments under the billing "graded"?

The Witness: Yes.

Exam. Mullen: What proportion, do you know?

The Witness: Very, very small portion.

Exam. Mullen: If they were shipped as graded, they would be treated just the same under your tariff as if they had been filled "current receipts"?

The Witness: That is right.

By Mr. Matson:

Q. You say a very small proportion. Is that less than five per cent of the eggs received in New York?

A. I think right now that would be right.

Q. About five per cent or less than five per cent?

A. No, less than five per cent.

Q. On page 3 of your statement, the bottom of the page, you say it is highly improbable that none of the 20 cases will show no damage to the top layer of eggs in the case. What is that statement based on? Is that just an assumption, or is it based on any facts?

[fol. 123] A. That is based on fact. It is highly improbable that a consignee who knows his eggs will be able to pick out 20 cases of his own choosing without there being at least one cracked egg in one of those 20 cases.

Q. Well, why is that, because you know that at least one case is going to have a cracked egg in it if it has had a rail haul?

A. Regardless of whether it had any rail haul or not, the chances are that in 20 cases you will find damage.

Q. And you put it on the basis of a mathematical probability?

A. No, I put in on the basis of a consignee's skill in picking out damage.

Q. Well, how can a consignee see through the egg case and tell which case has the cracked egg in it?

A. I didn't say he did.

Q. Well, how does he tell, then, how does the choosing by the consignee have anything to do with it?

A. You don't think the consignee who is thinking about a claim is going to pick out cases to show no damage or no evidence of damage.

Q. How is he going to know? The cases are nailed up.

A. Well, they are fibre cases, many times.

Q. Well, they are sealed up, aren't they?

A. Not always.

Q. Well——

[fol. 124] A. Anyway, he can find it, anyway, any 20 cases you pick up you are liable to find damage.

Q. You mean, you take them at random and the probability is that you will find damage in one case out of 20? Is that what you mean?

A. At least one, yes.

Q. And so that the choosing by the consignee doesn't have a thing to do with it?

A. Oh, no, I didn't say that. The consignee with certain claim skill can pick out some damage in the 20-case inspection. It is up to him to pick them up.

Q. What I want to know is, how does this consignee, looking at a closed-up case, know which case to pick?

A. You will have to ask Mr. Consignee that question.

Q. But you suspect that he has some intuition or skill which enables him to go to the closed up case and pick the case that has a broken egg in the top layer?

A. That is right.

Q. Do you know what the mathematical probability is of

finding a cracked egg in a top layer in one of 20 cases of eggs?

A. I never figured it out.

Q. ~~I didn't either~~. I just wondered if you knew. On page 4 you go back to 1941 when the rule was changed, in February, and say prior to that date only the damage in the cases showing external evidence of damage was recognized. Then you say this limitation is, in my opinion, reasonable [fol. 125] because the cases of eggs showing in external evidence of damage to the case or its contents at the time of delivery by the carrier at destination market is being delivered in the same apparent good condition as when received by the carrier at the time it was loaded into the car by the shipper's representative. I take it from that, that if you can't see an egg leaking out of the side of a case that the case should be considered to be in the same condition as when it was originally packed?

A. I didn't say that.

Q. Well, that was the implication I gathered from the statement that you did make?

A. That is the wrong implication. I said external evidence of damage.

Q. Well, what other external evidence of damage could we have?

A. A hole poked in the side of a fibre case.

Q. Could you have that without a broken egg leaking out?

A. Yes.

Q. Then the sense of this statement is that if the case appears to be whole and sound from the outside you think it should be accepted by the consignee regardless of how many cracked eggs are on the inside?

A. Regardless of what?

Q. How many eggs there are on the inside?

A. How many qualifications did you put on that?

[fol. 126] Q. Just one.

A. Well, there are several.

Mr. Matson: Would you read the question, Mr. Reporter, please?

(The question was read by the reporter.)

The Witness: Is that your question?

By Mr. Matson:

Q. Yes.

A. Whole and sound? It might be out of square. That is still whole and still sound. It might be badly stuffed some way or other. It might have a hole punctured in it. It might be leaking. External evidence of damage means just what I said.

Q. Now, can you answer the question without——

A. I——

Q. (Continuing)—those qualifications that you added?

Commr. Mitchell: I think he has given a pretty good answer to the question. He says that if it is externally sound he thinks they ought to be accepted regardless of what is inside the case.

By Mr. Matson:

Q. Is that what you mean to say?

A. There must be some external evidence of damage to the case or its contents. That is what I said.

Q. Now, in the middle of page 4 you say "During the year 1947 at New York 5944 cars containing eggs were inspected by the RPIA at piers and stations." I am comparing that with Mr. Hodkinson's Exhibit Nos. 11 and 12, and [fol. 127] it may be a typographical error, I don't know, or perhaps there is some other explanation. Mr. Hodkinson shows a total of claimed cars of 5044. Can you clarify that for the record, please?

A. We inspected 5944 cars of eggs at piers and stations at New York in 1947 and 1826 at New York in 1947 at storage warehouses. The sum total of those two should be the same or approximately the same.

Q. Well, the total of those is 7770, and I still can't reconcile the figures that you give with Mr. Hodkinson's figures. I am not discussing either one, but I think the record should be clear as to which is right. There is an apparent discrepancy.

A. You are talking about 7638, now, in Mr. Hodkinson's exhibit?

Q. Well, that is one of his figures and the next figure is 5044.

A. Well, the first one, 7638, is the sum total of the cars involved in his study. It may be that he couldn't get full data on all of the cars. That would explain the discrepancy there, and the 5044 are the claim cars.

Q. Now, do you understand that 7638 represents the total number of cars received in New York in 1947?

A. No, sir.

Q. What do those figures represent, then 7638 and 5044?

A. 7638? I thought I explained that. That covers the cars in this study that he made on which he could get records, complete records. The 5044 are the cars of that group on which claims have been paid.

[fol. 128] Q. What is the significance of 7638, then, if claims were only paid on 5000 cars, 5044?

A. Some cars are accepted as good order by the consignee. There are no claims filed on those cars.

Q. And yet you tell me that the 7638 did represent the total number of cars received?

A. No, sir, I didn't say that.

Q. Oh, I am sorry. Do I understand that it does represent all cars received in the New York area——

A. It does not.

Q. (Continuing)—in 1947?

A. It does not.

Q. Does not? We seem to be going in circles. If that figure does not represent the total number of cars received, then the computations made by Mr. Hodkinson do not reflect the total average claim per car or claim per car shipped.

Commr. Mitchell: Do you have the figure, Mr. Jensen, of the total number of cars received in 1947?

The Witness: No, sir.

Commr. Mitchell: You don't know? Mr. Hodkinson's testimony was that 7638 was the total number of cars received in New York City?

The Witness: No, sir, I do not know that. Some cars may be unloaded at points where they do not become a matter [fol. 129] of record in our records.

Commr. Mitchell: You haven't got the number of unloaded, anyhow, so you don't know that, do you?

The Witness: These are the cars on a matter of inspec-

tion records. The numbers I quoted in my own statement are the ones that we inspected.

Commr. Mitchell: How many was that?

The Witness: 7770 in 1947, in the New York area.

Commr. Mitchell: Well, all right.

Mr. Matson: It seems to me, Mr. Commissioner, that these figures are a little misleading.

Commr. Mitchell: I got it from Mr. Hodkinson's testimony, his contention was, there were 7638 total number of cars received there, and Mr. Jensen says 7770.

Mr. Knowlton: I think Mr. Hodkinson testified that he got these reports from the individual lines. He did it on the basis of the reports that they gave him. He compiled it that way. Now, there may be a slight discrepancy. If there is, I don't know what the answer is; but I know that the figures are approximately correct as given.

Commr. Mitchell: Well, that is the record, anyhow.

Mr. Matson: For a better record or worse.

By Mr. Matson:

Q. Now, at the top of page 5 you say "The options granted by the tariff have until recently been exploited on a technical basis only by certain receivers of the New York [fol. 130] market." Do you mean to imply by that that there is a growing tendency to exploit these options on a technical basis more than they were a year ago?

A. I think so, yes.

Q. Now, who was doing this?

A. The consignees.

Q. What is the name of the consignee?

A. Well——

Mr. McDonald: Well, Mr. Commissioner, I submit that that is not a proper question. The witness hasn't indicated that there was anybody in particular that he could be reasonably expected to name. He is not charging any particular individuals, as I understand it, with that sort of practice. He is merely saying that as a general thing that is the tendency. That is his testimony.

Mr. Morken: I would like to be heard on that, if the Commissioner please. I think that the whole thing is too

general. If there is somebody that is a dog in the manger let's point the finger at somebody. Let's get specific about this thing and quit talking about all these generalities that we can't meet. If somebody is wrong, why, let's lay it out on the table and get to the bottom of it. If it is my client, go ahead and name them. Then we will start bringing up some records and refute it, if we can. If we can't why, we are wrong.

[fol. 131] Commr. Mitchell: Well, if you know of people I don't know of any reason why you shouldn't testify as to who they are. You say you are being exploited——

The Witness: I don't have the records here.

Commr. Mitchell: Beg pardon?

The Witness: I don't have that kind of records here.

Commr. Mitchell: You say you have been exploited on a technical basis only by certain receivers in the New York market. If you can name who those certain receivers are, why, I think you should do it.

The Witness: I can't name them right now. I could get them from the records, but I think that is an improper question.

Commr. Mitchell: Well, we will rule on that, Mr. Jensen, not you.

By Mr. Matson:

Q. Will you supply that information to the Commission's investigator if he calls on you?

A. I will tell him where to get it, but I don't think that I should hold myself in such a position as that.

Q. Do you want to withdraw this statement in your testimony?

A. No, sir.

Mr. Matson: I understand that Mr. Jensen will tell the Commission's investigator, if he applies for the information——

Commr. Mitchell: Well, I don't know whether that is completely satisfactory or not. Are you making settlements now, Mr. Jensen, with people who you say are——

[fol. 132] The Witness: The RPIA makes no claim settlements whatever.

Commr. Mitchell: Are you recommending claim settlements?

The Witness: We recommend the amount that is in line with the damage, the market prices claimed and the salvage credited in the claim, provided the carriers' determination shows railroad liability.

Commr. Mitchell: What is this technical basis that you refer to, what do you mean by that?

The Witness: The consignee picks out 20 cases for this inspection. He looks through 19 of them and he finds no damage whatever. In the twentieth case he finds one cracked egg. In my opinion, that is a highly technical application of the tariff rules for him to proceed to lift the lids on all the rest of the cases in that car.

Commr. Mtichell: It is permitted, however, under your tariff?

The Witness: It is permitted. It is entirely in line with the rules.

Commr. Mitchell: Well, there isn't any exploitation on that, is there? He isn't exploiting anything that he hasn't got a right to do?

The Witness: Except that some of his competitors are not that smart, to exploit the situation.

Exam. Mullen: Are not that smart?

The Witness: Incidentally, they will all be smarter after [fol. 133] this hearing is over.

Commr. Mitchell: I hope the railroads are smarter after this hearing is over, Mr. Jensen, if you want to get down to facts. There is quite a record here. Go ahead.

By Mr. Matson:

Q. Now, you say this technical procedure accounts in part for the greater damage verified at New York and the correspondingly higher claim payments. You mean higher claim payments at New York than at Philadelphia or Baltimore, is that what you mean?

A. That is right.

Q. And "in part"—what does that mean? How big a part does that account for?

A. I don't know how big a part. It is just one of the things that influence the claim situation.

Q. It is just one of the things that might enter in?

A. Does enter in.

Q. How much larger is the claim because of this one broken egg?

A. How much larger than what?

Q. Than it would be if you didn't have that one broken egg?

A. There wouldn't be any claim.

Q. In other words, all the damage in the car would pass unnoticed if it hadn't been detected according to your rules?

A. My rules, no.

Q. Yes.

A. Classification rules.

[fol. 134] Q. They are not yours?

A. No.

Q. Mr. North this morning suggested that you were the one that composed these rules. Now, are you putting it back on him?

A. I didn't hear him mention me at all.

Q. Well, my recollection is that he said it was the RPIA men that suggested the wording of these rules. Now, if I am wrong in my recollection I apologize to you, but I would like to know what the facts are?

A. Well, as a representative of the railroads on the damage question we naturally have something to say in the general aspects of the thing, and we did make some suggestions, sure.

Q. They really are your rules, then?

A. No, sir.

Q. Tell us what happened on January 12, 1948? What changes did you make in your procedure?

A. We changed the practice of doing business with each sub-consignee on these consolidated cars which had been in effect for a good many years, and started to do business only with the consignee of record in connection with the determination of damage and the formulation and preparation of the joint damage report.

Q. Prior to January 12, 1948 did your inspectors in checking damage in these cars down on the piers, go through all the cases or how many cases did they go through?

[fol. 135] A. If you refer now to the cases set aside by the consignee on account of alleged damage.

Q. Yes.

A. It has been the practice to go through a representative number, maybe 20 percent.

Q. And then you multiplied by 10 and gave a blank check for the damage on that basis; didn't you?

A. No, sir, we made a sample inspection of the damage, just like the USDA does in theirs.

Q. Well, I don't like the analogy. How big a sample did you inspect?

A. It might have been a hundred percent, it might have been 20 percent.

Q. But if you only inspected 10 percent then you multiplied by 10 to find out the amount of damage which you would authorize payment for?

A. I didn't say 10 percent.

Q. I did.

A. I said 20 percent.

Q. Well, if you inspected 20 percent, you multiplied by five?

A. If it was done that way, yes.

Q. But you don't do that any more, though?

A. No, sir.

Q. How long was that practice in existence?

A. As far as I know it has gone back maybe—well, you [fol. 136] see, I took over January 1, 1946. It was in effect then and has been in effect for many years before that.

Q. It was in effect when these huge claims arose in 1944, wasn't it?

A. 1944?

Q. Yes?

A. Oh, many years before that.

Q. On page 6 you say that from the standpoint of rail transportation there are only two kinds of shell eggs. A similar statement was made in that reply to which I have referred, and I assume that the form originated at a common point. Do you know that to be a fact?

A. That what, the common point?

Q. Yes? Was that your idea?

A. I don't know what you are referring to.

Q. Look at page 6. You say, "From the standpoint of rail transportation there are only two kinds of shell eggs."

A. That is right.

Q. That is your idea?

A. That is right.

Q. And you want the Commission to limit the classification of eggs to these two kinds?

A. No, I didn't say anything like that.

Q. Well, are you saying that now?

A. No.

[fol. 137] Q. Well, isn't that the scope of your tariff provisions under investigation here?

A. No, there are at least three kinds of shell eggs in the tariff today.

Q. I see. You think that is one too many?

A. Well, if you will read a little further you will find that I grouped two of them in one.

Q. Now, what do you call a case of eggs which has had the contents transferred to a brand new box with new flats and fillers and every egg candled and inspected and all the broken cracked and dirty eggs taken out?

A. You say "dirty"?

Q. Yes.

A. That is leakers and stains, that is what you probably meant.

Q. Well, yes, let's take those out, too?

A. In which all the fractured eggs have been removed.

Q. Yes.

A. At the time and place those eggs are put in that new standard case they qualify as rehandled and repacked or storage packed.

Q. Those are rehandled and repacked eggs or another classification called storage packed eggs?

A. At the time and place the job is finished.

Q. Yes. Now, if this rehandling and repacking takes place out here at Chicago at the city limits and the case is trucked down to the rail terminal and put on a train here, [fol. 138] is that still a rehandled and repacked case of eggs within the contemplation of your tariff?

A. I recognize that as a catch question. If that is within the switch limits of the station from which the carload is

billed that will comply as rehandled and repacked according to my understanding of the term.

Q. Is there anyone that has a better understanding of these tariff provisions than you?

A. Oh, yes.

Q. Who is that?

A. You do, probably.

Q. No, I am just an amateur, but we want to know what these provisions mean, and I think if we can get the real meaning we can get it from you. Now, if there is anyone else who is going to testify I would like to know about it.

A. All right. In actual true circumstances there is no such thing as rehandled and repacked case of eggs at the time it is put into any car at any time or any place in technical language.

Q. Well, you mean to suggest, then, that in order to be a really and truly rehandled and repacked egg it would have to be done right at the car door or inside the car door?

A. And it is not possible to pack a case of eggs without some damage to the shell of the eggs on the basis of our own observations as presently packed in a commercial pack.

Q. If a farmer has a boy who goes to college and gets [fol. 139] educated about these rehandling and repacking of eggs and becomes proficient in that and he comes home and helps out on the farm and he applies all his technical knowledge that he has and he takes these eggs on his own farm and he eliminates all the objectionable eggs to which you have referred, puts the eggs in a brand new case with brand new flats and fillers, what do you call that?

A. Where did he do the job?

Q. On the farm.

A. Those are not rehandled and repacked.

Q. What are they?

A. Those are graded eggs.

Q. Those are graded eggs?

A. In the terms of the tariff as it reads today.

Q. But there is no difference in the two procedures?

A. What is the other procedure?

Q. The one we have talked about before.

A. At the car door?

Q. Yes, if it is done at the car door or done on the farm the same thing takes place?

A. If there is no difference in the procedure it is probably correct, in the packing of that case, you mean?

Q. Yes?

A. That is right.

Q. Yet in spite of that you will say one is a case of re- [fol. 140] handled and repacked eggs and the other is a case of graded eggs?

A. That is right, in the meaning of the term as it reads today.

Q. Yes. Now, the term "graded eggs" suggests to me that there are grades, and I understand from questioning of a previous witness that that does not refer to the grades as set up by the Department of Agriculture?

A. Definitely. That was stipulated in the hearings that we had here in Chicago on that very matter.

Exam. Mullen: Your tariff so provides, doesn't it?

Mr. Matson: I understand the tariff does so provide in a negative way, that it does not refer to those grades.

By Mr. Matson:

Q. Now, I would like to ask what grade does it apply to?

A. It doesn't apply to any grades.

Q. It is just a word that you use? You call them graded eggs? You might just as well call them hen's eggs?

A. That is right, but technically they would be current receipts, and the industry didn't like to have that kind of egg described as current receipts.

Q. Now, current receipts, as I understand it, now, is a run-of-the-nest egg. That has been testified here already today, which would include the dirty eggs, the stained eggs and checked eggs. In the case of this box of eggs which is repacked by the farmer's son he has taken all those things out. Yet you say that technically they should be current receipts?

[fol. 141] A. I think I said they should be called graded eggs.

Q. Well, graded eggs, but you agreed the term graded eggs doesn't have any significance whatsoever?

A. Oh, yes.

Q. What does——

A. It means eggs that do not qualify as storage packed or rehandled and repacked under the terms of the tariff.

Q. In other words, it is just other than storage packed or rehandled and repacked?

A. That is right.

Q. Or current receipts?

A. No, the current receipts is in the same group. There are only two exceptions. One is the storage packed and the other is rehandled and repacked. An egg that did not qualify as either one of those two is either called graded or current receipts, depending on the wish of the shipper. He can make his choice.

Q. You say this term "rehandled and repacked" applies even in the case of a shipment of eggs trucked from the extreme edge of the switching limits, is that right?

A. I suppose if you want to get very technical, yes, but I wouldn't think anybody would want to haul his eggs that way.

Q. I don't suppose he would do it on purpose unless he would happen to be located there?

A. Oh, yes, he might do it on purpose if he was in the claim business.

[fol. 142] Q. Well, now, that opens up another subject. Who is in the claim business?

Mr. Morken: Let's name some names.

By Mr. Matson:

Q. As distinguished from the egg business. That phraseology is taken out of that same document dated July 12, 1948. Do you know of anyone who is in the claim business as distinguished from the egg business?

A. Yes, but I am not going to say who they are, here.

Q. How many are there in that business?

A. More than one.

Q. Are they receivers of eggs?

A. Not necessarily.

Q. They are people who make money filing claims, is that it, claim sharks, is that what you call them?

A. Well, you could call them that if you want to, yes.

Q. Do they also file claims for other commodities?

A. Oh, yes.

Q. Do they go down on the piers and inspect these eggs down there? Where do they get into the picture?

A. As a representative of the people who own the eggs.

Q. You mean the claim shark is the consignee's agent?

A. Naturally. He couldn't file a claim without the owner's permission.

Q. When does he become the consignee's agent on that, then, after the egg is received, or is he a continuing agent?

[fol. 143] A. Either one.

Mr. McDonald: Mr. Commissioner, I don't like this. I am going to object to that line of cross examination. How could this witness or anybody else possibly know the answer to a question like that, I mean in all seriousness, and expect a sensible answer that would mean anything that would help this Commission determine the answer to this particular question that we are all trying to find an answer to here today?

Commr. Mitchell: This witness has testified that he knows people that are claim——

Mr. McDonald: That is true, but he certainly hasn't said anything that would indicate how he could reasonably be expected to know when anybody became an agent, and I submit that even if he did know and could answer it wouldn't have any importance.

Commr. Mitchell: I don't think that is a good question. I will sustain the objection to that.

Mr. Matson: I submit, Mr. Commissioner, that we have been confronted with this reply——

Commr. Mitchell: Well, you can ask him about it, but when he becomes an agent is a question that isn't very good.

Do the railroad companies deal with these parties that file these technical claims?

The Witness: Yes, if they are properly authorized by whoever owns the eggs.

Commr. Mitchell: You don't resist them?

[fol. 144] The Witness: What?

Commr. Mitchell: You don't resist the claim at all?

The Witness: Oh, yes, it has to be in line with the facts of damage and liability.

Commr. Mitchell: Do you mean to say that these people do anything to create this liability? Are they in any way responsible for the manufacturing of this claim if it is a manufactured claim?

The Witness: In the absence of evidence to prove such a thing, why, that could be. If we know that there is manufactured damage, why, that is another matter entirely.

Commr. Mitchell: I wish you could tell us just a little bit more about it. I don't quite get through my own head what you mean about these claims. You don't claim that the shipper of the car has any arrangement with the consignee down there to make an excessive claim, do you?

The Witness: Well, I can think, but I can't prove it. I think some of them do.

Commr. Mitchell: You don't want to testify to anything except that which you know.

The Witness: I don't know. But if the man referred to by Mr. Matson ships from the northwest corner of Chicago and loads his car at the southeast corner—I would be very suspicious of that gentleman.

By Mr. Matson:

Q. Why would you be suspicious of him? Can he [fol. 145] help——

Commr. Mitchell: I think we ought to get down, Mr. Matson, to more specific things if we can. We are not interested in whether he is running from one end of the yard to the other. This man is the head of this RPIA or whatever they call it, and you are the one that approves all of these claims for settlement, aren't you, or your organization?

The Witness: That is right. We make recommendations, yes. At the request of the railroads who submit the entire file to us for examination and evaluation.

Commr. Mitchell: All the claims that you recommend settlement on are claims where you have investigated the damage and have ascertained the amount of the damage to be actually there, is that right?

The Witness: That is right, and we ascertain three things in that direction. The first is that the damage claim corresponds with the verified damage at the time of destina-

tion inspection and delivery, and second, that the salvage is within reasonable limits for the damaged eggs, and third, that the values claimed are in line with published market quotations. The liability is not for us to determine. That is for the freight claim agent of the railroad to determine.

Commr. Mitchell: Of course, there are certain individuals that file more and bigger claims than other individuals, is that true?

[fol. 146] The Witness: That is true.

Commr. Mitchell: You haven't any knowledge, or do you have any knowledge of questionable or dishonest claims that are filed?

The Witness: Well, if it is questionable our recommendation would be in line with the facts we know and nothing greater than that. If we think the things were not as described we will apply, for instance, the five percent tolerance rule for breakage. If a man bills his eggs as rehandled and repacked eggs and we have some information to indicate that that was incorrect; in other words, that would be a variety of fraud, I think, and we will not accept that description. We will call them graded eggs and apply the five percent rule. That is in line with Mr. Murphy's investigation.

By Mr. Matson:

Q. On page 9 you start on another subject in which you use your slogan "normal expectancy." That phrase is a creature of your own, is it not?

A. Yes, sir.

Q. It was never used in the transportation business before you brought it in, was it?

A. Yes, sir.

Q. Where did you ever hear of it before?

A. A federal judge in Philadelphia in a suit on watermelons used it.

Q. You have tried it on watermelons, too, haven't you?

A. Yes, sir.

[fol. 147] Q. And you expect to try it on all commodities, too, don't you?

Mr. McDonald: Mr. Commissioner and Mr. Examiner, I seriously object to that approach. I say that this witness

is available for proper cross examination and, as far as I am concerned, we won't interfere with it, but I certainly object to that mode of approach. We are not talking about claims on watermelons or anything else. All that we are talking about is eggs.

Mr. Matson: Mr. Commissioner, we view this as one part in a general program of the railroads to have the Commission recognize this phrase "normal expectancy." They have tried it on watermelons. Now they are trying it on eggs and we——

Commr. Mitchell: Let's stick to eggs in this.

Mr. Matson: We don't think that it has any basis at all.

Commr. Mitchell: You can have your right to what you think and they have their right to what they think. I think you had better maintain an egg course, here.

By Mr. Matson:

Q. These investigation inspections tabulated in the middle of page 9—who made those inspections?

A. An employee of the RPIA, various employees, including myself.

Q. How many eggs did you look at in each case?

A. Sometimes we looked at every egg in the case, more often we looked at the top layer.

Q. And how many cases in a car?

[fol. 148] A. Anywhere from 15 to maybe 30 or 40, depending on circumstances. We aimed at 20 because that is the accepted destination type of inspection.

Q. Did you candle the eggs?

A. No, sir.

Q. Did you click them?

A. Except in certain periods in the latter investigations, 1949——

Mr. Knowlton: 1948.

The Witness: December 4, 1948 to February 19, 1949, we used a light. The rest of it we did not use a light on and we did not click the eggs. We recorded only visible damage, shell damage.

By Mr. Matson:

Q. Did you inspect any eggs in Southern Freight Association Territory?

A. Southern Freight?

Q. Yes.

Mr. Knowlton: Where were they moving?

The Witness: You mean destinations?

By Mr. Matson:

Q. Origin.

A. No, I think not.

Q. Did you inspect any eggs in any other states than Iowa, Indiana and Minnesota at origin?

A. No, I think not. You mean production areas, of course?

Q. Do not the rules under investigation here apply in 48 states to all shipments in this country?

[fol. 149] A. As far as I know, they do, yes.

Q. They would apply to a shipment from Utah to California, for example?

A. That is right.

Q. Is it your belief or contention that these percentages here are representative of origin condition of eggs on a nationwide basis?

A. No.

Q. On page 10 you say, "This normal expectancy of damage starts at the nest and dependent upon the strength of the individual shell continues progressively until the egg is used by the consumer." You mean to imply by that that an egg which is sound when purchased in a grocery store is any more liable to breakage than an egg immediately after it is taken from the nest?

A. I don't quite get you. It is still liable to damage, yes.

Q. But any more so?

A. It depends a great deal on how it is handled from that point there on. You mean it becomes more fragile as time goes on?

Q. Yes.

A. That could be, depending on the evaporation inside the egg. It might be that an egg with a large air cell could

break more easily than one with a smaller air cell, I don't know.

Q. You are just guessing at that?

A. That is right.

Q. The word "progressively" in that sentence, then, [fol. 150] doesn't really have much significance, does it?

A. Oh, yes. The more handling you give an egg the more liable it is to be damaged.

Q. You mean the more chances it has to be broken?

A. That is right.

Q. Then you say "sometimes unskilled or itinerant labor is used to load the car apparently without any previous training and with no supervision or interest on the part of the owner of the eggs in promoting careful and proper loading." Now, tell us, where does that take place?

A. That would be a long list, I am afraid. Algona, Iowa is one of them.

Q. Where?

A. Algona, Iowa.

Q. Algona, Iowa? Now, the loading there is performed by unskilled or itinerant labor hired by a packer located at that point, or is the farmer the one, or who is it?

A. Not at all times. I think I said at times, sometimes, I said. That doesn't mean universally at Algona nor does it mean Indiana or any other place, but it means at times, at some times. They pick up whatever labor they can to load the car, whether the man ever was in a carload of eggs or not isn't a part of the picture.

Q. Was that true in 1949?

A. Oh, yes.

[fol. 151] Q. You found that out in your investigations in preparation for this case?

A. Well, in my ordinary course of business in running this inspection operation I run into that.

Q. On the New York piers, who does the unloading there?

A. The railroad.

Q. And what type of labor is used for that?

A. A variety of labor, but they are generally people that know how to handle hand trucks.

Q. Are they trained in handling of eggs?

A. Yes.

Q. You train them?

A. No, sir.

Q. Is there any fluctuation in the number of cars received in New York at any one of these 30 or 40 points that you mention?

A. Oh, yes.

Q. So that you might get three or four cars of eggs down on one of these piers, on D. L. & W. pier No. 13, one night, and next night you might get the same number of cars up on B. & O. Pier 227?

A. Sure.

Q. Now, are there sufficient skilled unloaders at all of these points to handle those eggs properly regardless of what peak load comes in in any one night?

A. Yes, sir.

[fol. 152] Q. Do they have a lot of laborers sitting around doing nothing when they don't need——

Mr. McDonald: Oh, I object.

Mr. Knowlton: I object.

Commr. Mitchell: I don't see where this is material, Mr. Matson. We are taking a lot of time, it seems to me, on things that are very immaterial. That is ridiculous, to be arguing about that.

By Mr. Matson:

Q. On page 13 you state, "The objective of most poultry breeders has been, and probably still is, to produce more and larger eggs." What is that statement based on?

A. It is based on my own knowledge of agriculture and experience in the poultry industry.

Q. Do you know that many producers specialize in breeds of chickens that are not noted for large eggs but are noted mainly for production of a quantity of eggs?

A. Oh, yes, sure. That could be.

Q. Now, will you state what the railroads have done to eliminate the damage to eggs which has given rise to these tremendous claims set forth on Mr. Hodkinson's Exhibit No. 11?

Mr. Knowlton: Mr. Commissioner, the witness just finished a short time ago with 13 pages.

Commr. Mitchell: I think that is a fair question. That is what I want him to answer right now.

The Witness: You said eliminate the damage?

[fol. 153] By Mr. Matson:

Q. Yes.

A. The railroads cannot eliminate all the damage. The damage at destination will certainly be at least——

Commr. Mitchell: Let me ask you, can the railroads reduce these claims in New York?

The Witness: Yes, and we have, too.

Commr. Mitchell: When have you?

The Witness: Right after the January 12, 1948 plan went into effect we reduced them by getting a more accurate count of damaged eggs.

Commr. Mitchell: Your claim payments in 1948 were practically as high as they were in 1947.

The Witness: I am talking about damage, not particularly the money in claims. The damage story is a reduction.

Commr. Mitchell: What amount can these claims be reduced, in your judgment?

The Witness: I would be afraid to answer that question, because I might be so far wrong, but the application of a reasonable, normal expectancy will have a very great influence on the claim payments on eggs.

By Mr. Matson:

Q. You are talking entirely about eliminating liability for damage, aren't you? I am talking about eliminating the damage.

A. No, I didn't say that.

Mr. Knowlton: Wait a minute.

Commr. Mitchell: Let him ask his question. He has got [fol. 154] a right to ask his question.

By Mr. Matson:

Q. I want to know what the railroads have done to eliminate the damage, not to escape liability for damage?

A. That is what I am talking about. I am talking of damage, not as to liability. We have done a great deal in

the research field both in the loading and in the packing as far as we could, and of course, at the destination in the checking of the various types of damage. Right now we are experimenting with the use of a rubber blanket, a sponge rubber blanket, at the end of the load to see if that won't take up part of the shock that the egg case itself can't stand as it is made today. We have tried the use of different types of buffing at different places in the car. We have tried changing the method of arrangement of the cases in the load, crosswise and lengthwise, and bonded block methods. We have tried the blood method, we have tried the paper tie-down method.

Q. Have you done that with eggs?

A. With eggs. I am talking about eggs only.

Commr. Mitchell: What result are you having? Are you reducing the damage to these eggs?

The Witness: No, we haven't materially reduced it. You are talking now of the verified damage at destination?

Commr. Mitchell: Yes, New York, mainly is right, and the outturn in percentage of dozens shipped that are damaged, which I believe is a good index, remains fairly close [fol. 155] to the same. In 1947 the percentage of dozens shipped that were damaged on piers and stations at New York was 2.92 per cent. On the 5944 cars, that is. In 1948 they were 4265 cars, the percentage index being 1.9. That has been reduced about a half of one per cent, you see, or about one per cent, there. The first six months of 1949 ending June 30, 2.4.

Commr. Mitchell: 2.4, now, what?

The Witness: 2.4 per cent of the dozens of eggs shipped in these cars were damaged.

Commr. Mitchell: Are they now shipping 400 cases in a car, or have they changed that rule?

The Witness: The 600-case loading rule is out. The normal load would be 480 cases, four-high load.

Commr. Mitchell: Is that the way they are coming now, 480 cases a car?

The Witness: Yes.

Commr. Mitchell: That in itself would reduce the damage, wouldn't it?

The Witness: No, sir.

Commr. Mitchell: You don't think so?

The Witness: Not the percentage figure, not the percentage of dozens.

By Mr. Matson:

Q. Mr. Jensen, through the Association of American Railroads' freight claim division you have available ap- [fol. 156] proximately a thousand impact recorders, do you not?

A. I don't know anything about that.

Q. You don't know anything about impact recorders?

A. No. No, not your thousand. You said a thousand were available to me.

Q. Yes.

A. That is the first I ever heard of that.

Q. Do you know Mr. A. L. Green?

A. Yes, sir.

Q. I have a statement made by him in Cleveland before the American Management Association on April 27, 1948, and he stated that there are available a thousand impact recorders used by carriers to register the degree of impact shock that enters car and contents in switching and train operations. To what extent have you used those for the purpose of eliminating transit damages?

A. We used impact recorders on a number of cars. I don't have the number of them available right here.

Exam. Mullen: Just a moment. Are they merely measuring devices, or are they preventive devices?

The Witness: They will not prevent the damage. They will merely locate how the impact occurred and how severe the impact was.

Exam. Mullen: Just a recording device?

The Witness: That is right.

[fol. 157] By Mr. Matson:

Q. They also have psychological — upon people handling the car? Do you know that when the registers are in the cars there is a mark put around on the outside of the car, the picture of a clock drawn in chalk?

A. No, sir.

Q. You don't know that?

A. I know it is done, but not in all cases.

Q. It is not done universally?

A. I know that.

Q. Did you ever note a car of eggs in New York that had an impact register in it?

A. Oh, yes, we have put them in ourselves.

Q. What was the condition of the car?

A. Sometimes good and sometimes bad.

Q. You couldn't make any general statement as to whether that had any effect at all on the handling?

A. It definitely did not affect the handling of that particular car.

Q. How many cars did you note that in, just in one?

A. Oh, no, I told you a number of them.

Q. Now, another question. Why do not the railroads refuse to accept shipments which are not in good order? I am talking of eggs, now. Why do they sign a clean bill of lading when they know that the cars have maybe two per cent damage as testified to by you?

[fol. 158] A. How do you think the railroads know that?

Q. Well, you are testifying to that, I don't believe it.

A. I don't suppose you do.

Commr. Mitchell: What is your question, Mr. Matson? I don't understand that.

Mr. Matson: I am suggesting that the railroads should go to the origin of these shipments and if there is damage there inspect enough cars to eliminate that shipment of that condition.

Commr. Mitchell: There is evidence in this record that the railroads shouldn't spend any more money on this kind of traffic unless they can cut these claims down very materially. They are losing money on it right along. That is very evident. Let's get on, now.

Mr. Matson: I think this is right on the point, your Honor. They are suggesting that these cars have the damage in at origin, and, therefore, they want the American farmer to pay for this damage. I am suggesting to them that if the damage is in fact in those cars at origin that is the place to inspect them.

Commr. Mitchell: Well, ask this witness some questions. Don't be making a speech about the place for them to make it. You have a right to introduce evidence. You have checked that so you have evidence on it. I don't think that is the thing to do, here.

By Mr. Matson:

Q. Do you ever refuse to sign a clean bill of lading on [fol. 159] cars at origin, cars of eggs?

Mr. McDonald: Could I hear that again, please?

(The question was read by the reporter.)

The Witness: You are referring to me as manager of the RPIA?

By Mr. Matson:

Q. I am referring——

Commr. Mitchell: You don't have anything to do with shipments of eggs, do you?

The Witness: Of course not, no.

Commr. Mitchell: I think you are entirely out of line, Mr. Matson, asking such questions here.

Mr. Matson: I think it is material to the issue——

Commr. Mitchell: Well, I rule on it. Go ahead and ask some questions.

Mr. Matson: That is my final question, your Honor.

Commr. Mitchell: All right, any further cross examination from you gentlemen?

By Mr. Johns:

Q. Mr. Jensen, when did you become manager of the Managers Bureau?

A. On July 1, 1933.

Q. And at that time it was not your duty to inspect eggs, was it?

A. Not at New York, no.

Q. And I believe that that duty was assigned to your agency January 1, 1946?

[fol. 160] A. That is correct.

Q. Who has been inspecting eggs prior to that time?

A. The Trunk Line Association Freight Inspection Bureau.

Q. And when you took over the duties did you also take over employees?

A. Oh, yes.

Q. I understand that you changed some of the practices of those employees?

A. Not right away, but as we proceeded, yes.

Q. In other words, there were some practices that you didn't like?

A. Mostly in connection with the preparation of records and filing of records and things like that.

Q. What, for example, was this average of damages that was changed in January, 1948?

A. It took a little while to get preparation lined up for that.

Q. In other words, you tried to get down to exact damages rather than average damages?

A. That is correct.

Q. Now, how many employees did you take over?

A. If you want an accurate answer I will have to go back to the record.

Commr. Mitchell: He is going to bring that in tomorrow, Mr. Johns.

Mr. Johns: Well, does he go back as far as 1946?

By Mr. Johns:

Q. Is that what you are going to bring in?

[fol. 161] Mr. McDonald: We are going back to 1944, on which we agreed, for Mr. Matson.

By Mr. Johns:

Q. Well, just tell me approximately, now.

A. I think altogether somewhere about 27, 28, somewhere along in there.

Q. 27? Give us approximately the average age of those 27 inspectors?

A. I couldn't even guess at that.

Q. It would be close to 60?

A. I wouldn't dare answer that without looking at the records.

Q. Have those inspectors been in the business a long time inspecting eggs for the railroads?

A. Yes. For the Trunk Line Association.

Q. Yes. At New York you stopped this in January, 1948?

A. January 12.

Q. And did you issue specific instructions to those inspectors that that was no longer to be done?

A. That is right.

Q. And you state, as a matter of fact, that it is not done any longer?

A. Do you mean in every single case?

Q. Yes, sir?

A. I think it approximates a hundred percent compliance. There might be some special circumstances.

Q. In other words, you can't supervise every inspector you have?

[fol. 162] A. That is right.

Q. And you wouldn't vouch for the honesty of every one of those inspectors, is that right?

A. No, sir, I couldn't. Nobody can do that.

Q. Now, these inspectors you have—do they work out of a central office in New York? Do you assign them to wherever there are cars to be inspected?

A. No, they are not assigned every day. They have certain places where they work and they go there and report there and work there for their tour of duty. They might cover two, maybe three points.

Q. Well, now, a car of eggs comes into New York early in the morning. Is that your usual practice, the switching being performed after midnight, and your egg cars are placed, say, on the piers well before eight or nine o'clock in the morning? Is that the usual practice?

A. Well, that could probably be. That is quite accurate.

Q. They are then immediately unloaded onto the piers?

A. That is as soon as they are placed. It depends on the working arrangements of the employees on the pier as to when they start to unload.

Q. Well, on the average would these cars be unloaded, say, by nine o'clock in the morning?

A. No.

Q. They wouldn't be unloaded that early. When would [fol. 163] your inspector——

A. Partly unloaded, they might be, but not completely.

Q. Well, would your inspector first appear upon the pier when?

A. Which inspector?

Q. Well, the inspector that had that pier that day for inspection?

A. He might be there at midnight.

Q. Before the car even arrives?

A. That is right.

Q. So that he would be there to see those cars unloaded?

A. Not all of them, but as many as possible.

Q. Now, it wouldn't be unusual to get ten or 15 carloads of eggs in one night, would it, on one pier?

A. Right now it would be, yes.

Q. It would be? Well, would it be unusual to have six cars coming in on one pier?

A. I don't know what you are driving at here, but I can say yes or no to that and it wouldn't mean anything.

Q. Well, there are occasions when you have several cars coming in on one pier?

A. That is right.

Q. And how many men would you have down there to inspect those cars?

A. There might be just one.

Q. There might be just one, and in case a consignee didn't [fol. 164] want to inspect the car on the car, but at his warehouse, who would follow that car to inspect it?

A. We would not go to his warehouse except under very extra special conditions. The job has to be completed before the eggs leave the railroad premises.

Q. Well, then, how would you inspect the car that has been sent to a consignee's warehouse?

A. That is a good order car.

Q. I thought the tariff provided that he could request inspection at his warehouse?

A. With the railroads having something to say about it.

Q. Well, the railroad isn't in much of a position to have a say, is it, if that consignee wants a car?

A. Oh, yes, we can refuse to go to his warehouse. If he takes the car as good order we have got plenty of space for him to sort right there.

Q. Now, on this rehandling that occurs on the dock, on the pier, do you have an inspector there during that rehandling or prior to the rehandling to see the condition of the cases?

A. You mean the reconditioning?

Q. Yes?

A. That is right, we have a man there.

Q. At all times?

A. Maybe two men.

Q. Yes, sir. Now this count of inspectors of damaged [fol. 165] eggs—I think you spoke of a detailed count?

A. Yes,

Q. You are actually supposed to have an egg by egg check, every egg in the car, when you have a damaged car?

A. Not every egg in the car.

Q. Not every egg in the car?

A. Every case, every case which the consignee is not willing to accept as good order. Bear in mind, it is up to the consignee to make that decision. If he decides to take a car with damage in it as good order we have no further concern.

Q. Well, suppose that he opens one of those 20 cases and he finds the entire top layer broken. He is entitled to an inspection of that car, right, every egg in the car?

A. No, he is entitled to go through the rest of the cases in that car in a search for more damage. He is the one who does that.

Commr. Mitchell: He is only entitled to have those cases inspected that he pulls out and says, "I want those 'inspected,'" isn't that right?

The Witness: No, he says, "These are the cases that have damaged eggs in them."

Commr. Mitchell: Yes. Well, he does?

The Witness: He does that.

Commr. Mitchell: He designates the cases that are to be inspected?

[fol. 166] The Witness: Because he has already set them aside as damaged. Now, if there are some cases in that pile that are not damaged they will have to go back in the good order pile.

By Mr. Johns:

Q. Now, I believe you testified in answer to one of Mr. Matson's questions that there were three conditions upon which you based the recommendation for settlement of a claim. The first was, you had to have this joint inspection report, is that right?

A. Now, are you talking about the handling of a claim?

Q. Yes, sir?

A. The first one is, we compare the damage as set up by the claimants with our record of damage. If they agree then we have to come to a point of agreement on the amount of damage.

Q. Could you make a dollar recommendation as to that damage that the claimant has submitted, do you not?

A. On every claim sent to us.

Q. Yes, sir.

A. By the railroads, for that recommendation.

Q. And what is that dollar recommendation based upon?

A. It is based upon proof of the damage, reasonableness of the salvage allowed——

Q. All right. Now, there, right there, reasonableness of the salvage allowed. In other words, you do not require that claimants prove what they actually sold the damaged eggs for?

A. Well, he puts it in his statement certifying in the claim [fol. 167] that he sold them for that certain amount of money.

Q. And you make no check of that? You take his statement for the fact that he sold those damaged eggs for a certain amount of money?

A. We make that? No, we don't check that. If it is reasonable in line with practices, reasonable practices of selling, why, we say that it is reasonable.

Q. All right. Now, then, what is the third one?

A. The third one is that the prices claimed, the values claimed, are in conformity with published market quotations.

Q. And you do not ask the claimant to prove what he actually sold his good eggs for?

A. Well, he has got a statement certifying that he did sell them for that amount.

Q. And you are willing to take his statement?

A. That is the customary way.

Q. Now, Mr. Jensen, let me ask you if you are familiar with the principles and practices for the investigation and disposition of freight claims?

A. Yes.

Q. Published by the AAR?

A. Yes.

Q. I ask you—let me read you this——

Commr. Mitchell: Now, Mr. Johns, we are going into this entire claim business when we get to New York. It seems to [fol. 168] me that here we had better be taking up these other matters. It is the purpose of the Commission to make a very careful inspection of this entire claim matter right in New York. We expect the railroads to furnish us complete information. Certainly this record shows that it is time something is done at New York. If this doesn't shock the railroad executives it shocks some of the rest of us. If I am correct we are going to attempt to do it and if the railroads don't do it we will see that it is done, so I think the claim business ought to be put off until we get to New York, until our men have had an opportunity to go through those claims down there.

By Mr. Johns:

Q. Now, is there an inspection in addition to the inspection made by your agency? Is there an inspection of these eggs made by a railroad official?

A. No, sir.

Q. Have you since you took over the inspection of eggs found irregular practices by members of your agency or any railroad agency in O.K.'ing claims higher than they actually were?

A. Now you are talking about claim recommendations?

Q. Yes, sir?

A. Irregularities in the analysis of claims?

Q. Yes, sir?

A. No, I have never heard or seen of a case like that.

Q. Do you know Mr. Merril Pregler?

A. Very well.

[fol. 169] Q. You had occasion to visit him, oh, some time

the last part of 1947 and talked about these egg damage claims?

A. Yes.

Q. And do you remember that occasion?

A. Very well.

Q. And during your discussion I believe that you were talking with him about one carload of eggs that had an impact recorder in it and according to your inspector's report there had been no damage in the car when it arrived at New York, is that correct?

A. No, I think not. We had damage in that car.

Q. In that particular car?

A. Yes.

Q. Well, now, wasn't there a railroad checker involved in that deal? In other words, what I am asking you is, wasn't there two inspections of that car?

A. There was some kind of a railroad record, yes. I don't recall all the details on it, but I wouldn't call that an inspection by a railroad man. That happened to be—that was a record.

Q. But the record did show that the contents of the load were shifted; that there were several cases of eggs stained and crushed due to shifting in car. That record showed that, didn't it?

A. I don't remember, but I presume it did.

Q. In fact, during the conversation you were taken quite by surprise by finding that that car had been damaged, weren't you?

[fol. 170] A. That is right. I corrected it immediately.

Q. Now, tell us how that irregularity came about? In other words, which report was correct, your report or this other report?

A. The RPIA report was correct. I can't answer for the other man at all.

Q. But that would indicate, wouldn't it, that there is finagling at New York by railroad employees or someone?

A. No, sir, that particular practice was discontinued as fast as I got back to New York.

Q. Well, now, what was the practice?

A. The one you just referred to. The RPIA is the only official inspection agency representing the railroads.

Q. That is right, and someone else made an inspection report, didn't they, some railroad man made an inspection report?

A. And he quit doing it, too.

Q. Yes, sir, he certainly did, but you did have two inspection reports on that car?

A. No, sir, I don't call that an inspection report.

Q. Well, you did have two reports on that car, one showing no damage and your man saying—well, your man saying no damage and the other report showing substantial damage?

A. Well, I don't recall the details on it. We had damage in that car.

Q. Well, let me ask you this. Do you remember telling [fol. 171] Mr. Pregler this:

"Mr. Jensen was visibly disturbed over the discrepancy between the two inspection reports and in a moment of anger stated 'someone on the so-and-so railroad is covering for the receivers.'"

Do you remember saying that?

A. No, sir, I did not say that.

Q. Now, Mr. Jensen, this morning did you hear Mr. Murphy testify about one claim, this one Pregler claim, where you applied the five percent tolerance?

A. Yes.

Q. And according to Mr. Murphy's testimony the five percent is five percent of the damage and not five percent of the entire car?

A. No, five percent means 18 eggs in a case. That would apply to every case set aside by the consignee because not acceptable as good order. He claims there is damage in that case. We would apply the five percent rule to that case and every other case like it. For instance, the claim if recommended—if the number of cases involved showed six percent damage we would recommend that the claim be limited to one percent.

Q. But that five percent rule, tolerance rule, does not apply to the good cases in the car, too?

A. No, sir.

Q. It only applies to the damaged cases?

[fol. 172] A. That is right. If we have verified the damage in those cases.

Commr. Mitchell: Further cross examination?

By Mr. Morken:

Q. Mr. Jensen, I am referring to this 1919 decision of the Interstate Commerce Commission. I wanted to make a comparison here. Are the railroads in this proceeding or in any way of handling these eggs trying to disclaim any responsibility for their own bad handling?

A. Not that I know of.

Q. Is the claim of the rails that packers of eggs intentionally put broken or cracked eggs in cases?

A. No.

Q. Prior to the formulation of these rules and regulations on the five percent, did the rails make any study of shipments from various packing houses? In 1919 they had made an extensive study involving 12 packing houses. Had a similar study been made at this time by the railroads?

A. I think the study in 1919—I don't know personally—was made by the government people.

Q. But before this proceeding the rails didn't make their own investigation as far as how different packers handle their eggs?

A. We have been working on that, the RPIA has been working on that, since 1946.

Q. Then you did make an investigation?

[fol. 173] A. That is the ordinary course of investigation in our research for causes of damage. We visited points in Iowa, Minnesota, Indiana, investigated and made inspections of the eggs as they were offered to the carriers, and the records reflect it right here, what I said this morning.

Q. On that inspection that you made you list Minnesota for 1947 and 1948. How many people did you call on, how many packers or shippers of eggs?

A. I don't know offhand, but I wouldn't be surprised if we called on your people.

Q. Yes, they were called on three times in 1948 that I know of. I am wondering how many others, though, you called?

A. Oh, possibly eight or ten.

Q. And who were they?

A. I would have to check the record for that.

Q. Do you have it here?

A. No.

Q. Are you familiar with the fact that all three times your inspection men called on Midwest Dairy that they never reported a cracked or a broken or a checked egg loaded into a box car?

A. My recollection is just the other way.

Q. But you don't have that report here?

A. No, sir.

Mr. Morken: Mr. Examiner and Mr. Commissioner, on page 9 of the statement under "normal expectancy of shell [fol. 174] damage," the witness alleges some facts about breakage in cars. Obviously, it is not the best evidence and the witness just admitted that he is not qualified to explain it and I object to the receipt of that testimony and ask that all reference and recollection to it in this record be stricken.

Commr. Mitchell: It will be received for what it is worth. We have the record.

By Mr. Morken:

Q. The Commission found in 1919 that cracked eggs subject to shock similar to those received at railroad transportation points indicated that cracked eggs resist shocks almost as well as sound eggs. Has that been changed?

A. Cracked eggs will do what?

Q. Will resist shocks almost as well as sound eggs. In your opinion, is that finding wrong?

A. I never heard of that finding. Offhand, I would say that a cracked egg is weaker than a sound egg.

Q. What do you base that statement on?

A. General experience and knowledge of eggs.

Q. You have never run any test to see what shocks cracked eggs can withstand as compared with sound eggs?

A. I haven't, no.

Q. In 1919 nearly all witnesses agreed that eggs should be inspected at the station or dock of the carrier, and I was wondering what steps the railroads have taken in the last 30 years to inspect eggs as they are shipped safe from Minneapolis?

[fol. 175] A. I don't know how far they have gone, but there has been some inspection. Obviously, a very impracticable operation.

Q. About how long would it take an inspector to lift a lid of a wood case and inspect the top layer, one case?

A. Possibly four or five minutes, maybe.

Q. If there were more, if there were 20 cases, about how long would it take him, 18, 20 minutes?

A. Oh, possibly half an hour.

Q. Half an hour?

A. That isn't the point, though. The big point is to have the inspector and the eggs at the same place at the same time, and that is where the difficulty is.

Q. If the eggs were being loaded in rail cars there would be some employees of the railroad in the vicinity, would there not?

A. You would have to have an egg inspector, there, a man that is qualified. We have tried that and sometimes we used four or five days' time of two men trying to get an inspection on a prospective car. Eventually it goes out by truck.

Q. Mr. Jensen, on those movements by truck, if we present figures here that show that eggs are trucked better than 1300 miles from Minneapolis to New York with claims so small that they are negligible, would it change your opinion in the amount of damage that might be done in, say, a 50 or a 60-mile haul?

A. Not a bit.

Q. Not a bit? During the past 30 years have the railroads [fol. 176] made a practice of placarding cars with eggs in them to advise the crew that such a commodity is in their train?

A. Some railroads do and others do not.

Q. Would it be a very difficult procedure to placard a car of eggs?

A. Not very difficult, but it doesn't do what is intended to do.

Q. Have the railroads run any special trains of eggs between Chicago and New York?

A. When?

Q. In the last 30 years?

A. Not that I know of.

Q. In 1919 the railroads had three cars equipped with Cutler-Smith shock absorbers. How many cars do the railroads have now with those types of shock absorbers in them?

A. With that particular type?

Q. Or a similar type?

A. Any other type of spring?

Q. Yes?

A. I suppose there are several thousand by this time.

Q. Are they in general use in the egg business?

A. They are in the egg business, yes.

Q. Pardon?

A. They are used in the egg business, yes.

Q. Do they cut down the claims?

A. No, sir.

[fol. 177] Q. I assume your rules require that all of your inspectors in New York make personal inspections of these damaged eggs?

A. Eggs they look at?

Q. Yes?

A. Positively.

Q. Do you know if some of these so-called inspections are conducted by telephone?

A. I do not know that, and I challenge the statement, too.

Q. If such a practice was followed would you know about it?

Mr. Knowlton: I object to that.

The Witness: How would I know about it?

By Mr. Morken:

Q. I say, would you?

A. If I did I wouldn't be here.

Q. The practice could have been going on and you could not know about it?

Commr. Mitchell: Oh, I think this is immaterial unless you have got some evidence, and I don't think you should examine this man on his testimony about it.

Mr. Morken: I have one exhibit I would like to have marked, Mr. Commissioner, and then it is all done.

Commr. Mitchell: Are you through with this witness?

Mr. Morken: No, sir, I have one exhibit I would like to have marked. I will find it here in just a moment. Then I will be done.

Mr. McDonald: Wait until we see that.

[fol. 178] Exam. Mullen: We won't give it an exhibit number yet. Let them see it.

Mr. McDonald: What is the purpose of this?

Commr. Mitchell: Let's see the exhibit. Let's proceed. Let's see the exhibit.

What is this?

Mr. Morken: I have with this exhibit this thought in mind. We have been charged by this gentleman of loading damaged eggs in Minneapolis. This is a copy of their inspection report in Minneapolis made in New York. It shows there is no record of any damage in Minneapolis. Eventually with my own witness I will follow that out and show that these gentlemen have never sent him any copies of reports——

Commr. Mitchell: Let's stick right to this now. Can this witness identify it? Show it to the witness.

By Mr. Morken:

Q. Showing you this document, do you know what that is?

A. Yes, sir.

Q. What is it?

A. That is a special report we send to the shipper giving him information on the outturn check of his car.

Q. Now, is there anything on there that indicates the condition of the car when it was loaded in Minneapolis?

A. No, sir.

Commr. Mitchell: Does this record show that this witness [fol. 179] testified that your company put broken eggs into cars? Is there testimony to that effect?

By Mr. Morken:

Q. Wasn't that your statement, Mr. Jensen, that it was your recollection that we did load damaged eggs?

A. I said that we have never yet seen a car in process of loading at shipping point in the production area of egg

that did not have some damaged eggs, some shell damaged eggs, in one of more cases inspected by us.

Q. No, to the specific question you said that it was your recollection that Midwest Dairy Dispatch loads eggs into cars that are damaged?

A. I never said that.

Q. Oh, all right. Then if the record so shows you want to withdraw that statement?

A. The record won't show that I ever charged Midwest specifically with loading damaged eggs.

Commr. Mitchell: I didn't remember it. I don't know.

Mr. Morken: In connection with my

Commr. Mitchell: Let's go ahead. If it is in there he has withdraw it, anyhow.

Mr. Morken: All right, sir. It follows on my objection to the foundation that the witness laid and the best evidence of that material in Exhibit 9. There is a general inference, there, that in Minnesota they load damaged eggs. He says that they have reports, but he hasn't got the [fol. 180] reports here. Now, how can we meet it or refute it?

Commr. Mitchell: Let's go ahead, now. If you have got any evidence we will give you all the opportunity to present it.

Mr. Morken: I will withdraw physically this exhibit. I have no other questions.

Commr. Mitchell: Any further questions?

Mr. Staley: I have some.

Mr. Blanchard: I do, too.

By Mr. Blanchard:

Q. Mr. Jensen, will you please refer to page 9. You show in the Indiana cars the number of cars tested for each one of the three intervals. Can you give us the number of cars tested in Iowa and Minnesota in 1947 and 1948, respectively?

A. That must have been inadvertently omitted from this statement. We have records back in the office on that.

Q. Can you supply that information?

A. Yes, we can supply that.

Q. Can you estimate whether it was 50 or 100 or give us any idea?

Commr. Mitchell: He has agreed to furnish the information. I see no reason why he should furnish an estimate now.

Mr. Blanchard: I would like to use it, your Honor, for a basis for the next question.

Commr. Mitchell: Well, you go ahead.

The Witness: It was less than a hundred.

By Mr. Blanchard:

Q. Let's assume there was a total of 250 cars shown in- [fol. 181] spected. How many of them were rehandled and storage repacked within the meaning of your tariff and how many were graded eggs within the meaning of your tariff?

A. Within the meaning of the present tariff none of the Indiana eggs comply with rehandled and repacked or storage packed.

Q. So those are the percentages of cracks in what you call graded eggs?

A. That is right.

Q. Now, can you give me the information as to Iowa or Minnesota in this respect, as to whether——

A. I don't know. We can try.

Q. Will you at the time you furnish this information tell me what percentage was graded eggs and what percentage complied with your tariff as to storage or—what do you call them?

A. Storage packed and rehandled.

Q. Yes.

A. Of course, you understand that the 47 cars would comply technically——

Q. With the old tariff?

A. With the old tariff, and it may be that the Iowa cars and the Minnesota cars were inspected before July 24. If so, they all comply under the old tariff.

Q. But under the present tariff the Indiana cars would not comply?

A. That is right, but there are quite a few there in 1947, too.

Q. Have you any information that would indicate how

[fol. 182] many of those cars were loaded with eggs in fiber cases and how many in wood cases and how many mixed?

A. You are referring only to these cars now?

Q. To these particular cars coupled with those you are going to give us?

A. We have got the record to shew. It would show whether they were—what type of fibre was used. It wouldn't tell the number if they were mixed, wood and fibre. It wouldn't tell the number of each.

Q. Not the number of each, but a mixed car?

A. Yes.

Q. Now, you have a special provision in your classification concerning the manner in which cars loaded with cases part wood and part fibre must be loaded, do you not, prohibiting the loading of wood cases on top of fibre cases?

A. Yes, that is right, but that rule might be construed in different ways. It is not quite as clear as it ought to be, in my opinion.

Q. Can you give us reference to that item in the classification so it may be of record?

A. I can't give it to you by number or page or item, but it says something to this effect, that—using my own language—fibre and wood shall not be loaded in the same row layer in the car.

Q. Unless the fibre is loaded in the top layer, is that it?

[fol. 183] A. No.

Q. All right, I am talking from memory, too.

A. No, I am talking about——

Q. You will supply that with the other information?

A. That, I think, is already in the record, isn't it, the tariff?

Q. It wasn't Mr. North's exhibit.

A. Well, it is in the tariff under the loading rules.

Q. Now, without giving specific names, can you tell us where these cars, discussed on page 9—to what point were they consigned or points?

A. Destinations?

Q. Yes.

A. I think these were all New York cars.

Q. All going to New York, and you know for a fact they were all rail shipped after your inspection?

A. Oh, yes, we inspected these eggs with the same man at shipping point and at destination. He saw exactly the same eggs.

Q. Do you have a record of what the outturn of these cars was at destination and how many of them you paid claims on?

A. Yes, we have got the outturn. I don't know about the claim payments but——

Q. Will you furnish that also?

Mr. Knowlton: Now, that is a big request, to go through hundreds of cards and give all this information that was [fol. 184] put under inspection. I don't think it is necessary.

Mr. Blanchard: I am asking him if he will furnish it. I am not arguing about it.

Mr. Knowlton: All right, then, we will drop it.

Mr. Blanchard: The witness won't furnish it?

Mr. Knowlton: All this——

Commr. Mitchell: Let's go ahead. He says he will drop it.

By Mr. Blanchard:

Q. Would your opinion of the representative nature of these percentages on page 9 be affected if it were shown to you by authorities that you did not question that the percentage of shell damaged eggs in truck shipments at destination after being tracked twelve to fifteen hundred miles was less than one per cent?

Mr. Zearfaus: I think that the witness has already answered a similar question of another attorney.

Mr. Blanchard: If he did, I missed it.

Commr. Mitchell: There is no use going over the same thing, Mr. Blanchard.

By Mr. Blanchard:

Q. By percentage here, you mean percentage of shell damage as defined in your previous testimony?

A. The number of eggs examined—of that number examined this percentage showed shell damage.

Q. Shell damage, yes. Now, as I understood your testimony, if you and I each received a carload of eggs in New

York today under the present tariff each of us would have the opportunity of opening 20 cases, is that correct?

[fol. 185] A. Of our own choosing.

Q. Yes. Now, if the 20 cases I selected showed no broken eggs in the top layer what would be my right under the tariff?

A. That is a good order car, and you are finished as far as the railroad is concerned.

Q. And no matter how many eggs were broken back of that it would be my loss?

A. Because you made the first decision and you picked the 20 cases that you wanted to use.

Q. Now, if you picked, likewise, 20 cases and you found one broken egg, do I understand that under your present tariff that would entitle you to sort out every case showing damage and file a claim for all damaged eggs in the car?

A. Yes.

Q. Have you ever seen them open these 20 cases when they opened them for that inspection?

A. Oh, yes.

Q. What kind of a tool do they use, usually?

A. They usually use a hatchet.

Q. It is a hatchet with a metal handle with a nail puller on the lower end, isn't it?

A. Oh, no. A plain, ordinary Cooper hatchet.

Q. A plain ordinary Cooper hatchet?

A. Sometimes we use a fruit hammer, as we call them.

[fol. 186] Q. That is what I call it, a fruit hammer, a nail puller on the lower end, and the whole thing metal?

A. It is a flat end.

Q. Yes.

A. It is a proper tool for that.

Q. Now, if in these two cars of yours and mine we each use a hatchet or our employee did, and on the twentieth car my man's hatchet slipped, slipped in the right place, would he be apt to find——

Commr. Mitchell: I think you are getting too far away here. I think that is absolutely immaterial and we are just consuming time.

The Witness: The answer is, it is a good order.

By Mr. Blanchard:

Q. I mean, if without your knowledge one egg is broken in the top layer of your 20 cases, you do not go back and find out the cause of that break?

A. Well, this is a joint inspection.

Q. All right.

A. If we saw your axe slip it is a good order car.

Commr. Mitchell: I think you have taken up a lot of time. I don't think there is a thing to that kind of testimony, and we are just wasting time. If you have some material questions, ask them.

By Mr. Blanchard:

Q. Now, I am unable to reconcile your statement on pages 3 and 4 with the testimony of Mr. North as to what [fol. 187] happened on February 10, 1941. You stated at the top of page 4 that prior to that date only the damage in cases showing external evidence of damage was recognized by the carrier, is that correct?

A. I interpolated something that was missing in there, to see Mr. North's exhibit for full details.

Q. In other words, the other three causes you are in agreement with—there were three causes, shifting of the load and so on?

A. That is right.

Q. You are in agreement with Mr. North? I am sorry I missed your connection.

A. That is right.

Mr. Blanchard: That is all.

Commr. Mitchell: Any further cross examination?

By Mr. Staley:

Q. Mr. Jensen, let's assume that there was a joint inspection by you of the case of eggs which arrives in New York and that on inspection of this case you find that it has 324 good eggs in it without any shell damage of any kind, but that you also find that there are 18 checks and 18 broken eggs, that is, let's call them leakers. Now, suppose the consignee claims, and you agree, that as to the 18

checks he sustains a damage of 10 cents per dozen, and he has to sell them at a discount of 10 cents per dozen, so that would be 15 cents a dozen for the 18 checks. Now, as to the 18 broken eggs, let's assume that those must be destroyed and that the value is 50 cents a dozen. That would add [fol. 188] another 75 cents to the damage. Now, let's assume that labor and material for repacking amounts to $1.

A. In one case?

Q. That is right. What would it amount to?

A. Forty cents.

Q. All right, let's assume that it amounts to 40 cents.

Commr. Mitchell: That is only 40 cents if the consignee handles it. Wouldn't it cost you more than 40 cents if you rehandled it and repacked it?

The Witness: I think this gentleman represents Swift. Don't you?

By Mr. Staley:

Q. That is right.

A. I happen to know that they use the 40-cent range.

Commr. Mitchell: All right, but there are two different methods there, as I understand it.

The Witness: You could do it on a time and material basis. It might take three hours to repack that case if you wanted to, if we weren't looking.

By Mr. Blanchard:

Q. All right. Let's take the 40-cent basis. Now, the entire damage to the consignee there would be 15 cents plus 75 cents plus 40 cents, amounting in all to $1.30, would it not?

A. That is right.

Q. Now let's assume that that case of eggs has been re- [fol. 189] handled and repacked at a point beyond the rail point of origin, and that the five per cent allowance under the present tariff rule is applicable. What would your recommendation be as to the amount of damage on that case of eggs payable to the shipper?

A. Sixty-five cents.

Q. That is, you would simply cut that claim in half because five percent of a case of eggs is 18 eggs?

A. And there were 36 damaged.

Q. That is right. Now, if the case had come through with only 18 checks in it and no other damage there would be no claim at all that you would recommend, is that right?

A. We would recommend the claim be declined.

Q. And don't you know that under those circumstances the shipper or the consignee would probably be able to sell the whole case of eggs at the regular grade without taking a discount, that is, with the checks and with the others?

A. If he put in a claim for it, why, that is his own graveyard, not ours.

Q. No, that isn't the question. The question I asked was, if you knew whether or not he would have to take a discount on his case of eggs by reason of having 18 checks in the case?

A. I would think he would.

Q. You don't know that, though?

A. No.

Q. And at one point in your testimony, Mr. Jensen, you [fol. 190] said that prior to April 26, 1946 the terms "storage packed" and "rehandled and repacked" were interpreted to mean that the eggs had actually been rehandled and repacked in conformity with the classification requirements at the actual point of rail shipment. That was prior to April 26, 1946. As a matter of fact, were those eggs that were rehandled and repacked at country points beyond the point of rail origin on exactly the same basis as a case of eggs that had been rehandled and repacked at the rail origin?

A. You are referring only to the operation of repacking and rehandling?

Q. I am referring to the five per cent breakage tolerance rule which was in effect in your tariffs?

A. Five per cent breakage tolerance rule applied to eggs which were not rehandled and repacked at the point of origin of rail shipment just prior to the date of shipment.

Q. Now, five percent tolerance would not apply to what you designated graded eggs prior to the time that the 1948 tariff change was made, did it?

A. The term "graded eggs" in itself, in its meaning under the tariff, did not exist until July 24, 1948.

Q. Now, therefore, your statement here is not correct that the terms "storage packed" and "rehandled and repacked" only applied prior to that tariff change to eggs that were handled that way at the actual point of rail shipment and where the rehandling and repacking had been [fol. 191] done just prior to shipment?

A. Why, certainly, that is correct.

Q. This is correct? Now, you heard Mr. Murphy testify that on October 10, 1945 the Eastern Claim Conference adopted a certain resolution reading, "The term 'rehandled and repacked' shall apply only to eggs that have actually been rehandled and repacked at the point of origin of the rail shipment."

A. That is right.

Q. "In relation to which the claim arises within a reasonable time prior to that shipment having been made." Now, what was the occasion for that resolution?

A. That was a clarification of the definition for the purpose of handling claims on a reasonable uniform basis, and that interpretation applied from that date on to April 26, 1946. I note that Mr. North had it April 30. Maybe the record will clarify which one of those will be shown as correct.

Q. All right. That resolution was appealed to the Tariff Executive Association which reversed it, is that right?

A. They didn't reverse it. They just interpreted it a different way.

Q. They made a different interpretation and all the claims that were pending up to that time were given the benefit of the new interpretation?

A. That is right. There were several thousand of them right in my office.

[fol. 192] Exam. Mullen: What year was that, did you say? 1945, was it?

Mr. McDonald: 1946.

Mr. Staley: In 1945 the resolution was adopted and in April, 1946 it was reversed or an interpretation was issued——

Exam. Mullen: During that period was there a large amount of claims pending?

The Witness: A very, very large amount, yes.

Exam. Mullen: When were those claims disposed of, what year?

The Witness: In 1947.

Exam. Mullen: 1947. Would that account for the large increase in 1947 to some extent?

The Witness: And in 1948, too, I think. Some of them carried over, although I am not sure of that. I have got the claim analysis according to year of movement right here.

Exam. Mullen: In other words, during the period counsel is speaking of there was a dispute as to what the tariff meant, was that it?

The Witness: That is right.

Commr. Mitchell: Is that all?

Mr. Staley: That is all.

Commr. Mitchell: Go ahead, Mr. Krebill.

By Mr. Krebill:

Q. What type of railroad cars are used for the transportation of eggs?

A. The standard refrigerator car.

[fol. 193] Q. Has there been any change in the type of cars that have been used in recent years?

A. You mean generally or in any specific way?

Q. Generally?

A. There might have been some brine tank cars used, but generally speaking the standard refrigerator car is used. The change in the type would apply partly in the direction of standardizing dimensions, inside lengths and inside width, bunker capacity, and maybe some other facilities of the car itself.

Q. Well, have there been any special cars used that are especially designed or constructed for transportation of eggs?

A. Not that I know of.

Q. Down at inspection at the New York docks, what kind of inspection is performed there? Are the eggs handled?

A. By whom?

Q. By you?

A. If there was no complaint at all from the consignee we wouldn't make any inspection.

Q. Well, suppose some cases are set out?

A. If those are set out it is up to the consignee to show us the damage that he thinks is chargeable to railroad handling.

Q. Well, what kind of inspection is performed?

A. He may go through the case all the way to the bottom or he may stop at the top. That is up to him, when he is talking about damage he wants us to recognize.

[fol. 194] Q. But when you have joint inspection you may inspect the entire case?

A. That is right.

Q. But you do not do that? That is according to the wishes of the shipper?

A. The consignor.

Q. Or the consignee?

A. After all he is the one that wants the damage recognized.

Q. And what is the practice, what kind of inspection is performed?

A. You mean the——

Q. Are they candled?

A. No, sir, it only goes for visible damage, shell damage.

Q. Or are they clicked——

Commr. Mitchell: You lift one egg from one case to another, put th. good eggs in one *eggs*, and the leakers in one place and the cracked in another place, don't you?

The Witness: That is right.

Commr. Mitchell: That is all you do do?

The Witness: And the stained eggs. The stained eggs are eggs which are stained by the contents of a broken egg from the same case.

By Mr. Krebill:

Q. And each egg is handled individually?

A. Well, they might be able to handle two or three at a time, but not clicking and no candling in the determination [fol. 195] of that damage.

Mr. Johns: May I ask one question?
Commr. Mitchell: Yes.

By Mr. Johns:

Q. What is the salary paid to your inspectors at New York?

A. I think I would have to look at the payroll.

Commr. Mitchell: I don't see where that is material at all. It is under a working agreement.

Mr. Johns: I will withdraw it.

The Witness: They change pretty often.

Commr. Mitchell: Is there any other cross examination of this witness?

Thank you, Mr. Jensen.

(Witness excused.)

Commr. Mitchell: You said you have one witness you want to call, Mr. Smith?

Mr. Smith: Yes, sir.

Mr. Knowlton: I have one witness. This will just take a moment.

Commr. Mitchell: All right.

Mr. Knowlton: Mr. Piehl.

F. A. Piehl was sworn and testified as follow

Direct examination.

The Witness: My name is F. A. Piehl, manager of the [fol. 196] Western Weighing and Inspection Bureau, Chicago, Illinois. I have been in the Inspection Bureau business for 29 years.

By Mr. Knowlton:

Q. Mr. Piehl, to shorten this up, did you have an inspection made of eggs at origin?

A. I did.

Q. Briefly tell the Commission what you had done, and I would like to identify your exhibit as No. 15.

A. We had two inspectors we sent out into the field to make inspection at the point of origin at the time the eggs were being loaded in the cars.

Mr. Knowlton: I want to have your exhibit marked 15.

(Respondents' Exhibit No. 15, Witness Piehl, marked for identification.)

The Witness: We adopted a program of taking 15 cases and inspecting 100 eggs to determine how many eggs were checked, broken, stained and dirty. The statement shows that we made inspections on 60 cars and we developed through the process that we used 2256 checks, 98 broken or a percentage of 2.61.

Mr. Knowlton: Cross examine.

Cross-examination.

By Mr. Matson:

Q. Mr. Piehl, I believe you said you looked at 100 eggs in each case?

A. A hundred eggs in each case.

Q. And how many cases in a car?

A. Well, 400, 520, 600.

[fol. 197] Q. You looked at every case in the car?

A. No, we looked at 15 cases, 15 cases.

Q. You looked at——

A. If you want the formula I can give you the formula that the inspector used. It would be very brief.

Q. All right, let's have it.

Commr. Mitchell: Well, you checked different numbers of cases in different cars, didn't you?

The Witness: Fifteen cases in each car.

Commr. Mitchell: Here is one down here at Guthrie Center, 101. Is that number—oh, that is checks.

Mr. Knowlton: That refers to checks.

The Witness: Inspection of 100 eggs in each 15 cases per car for shell damage only. We defined a broken egg as an egg from which contents issued. A shell that is a check is a shell that has an actual break but its membrances are unbroken and its contents are not leaking, stained. A shell

with stained or soiled spots results from contact with broken or leaking eggs, not to be confused with dirties, nest dirt, mud, and so forth. Examine the eggs in the three top fillers in the first case except eight eggs in the third filler. The three bottom fillers in the second case except eight eggs in the third filler, and that was the program that the inspectors used.

By Mr. Matson:

Q. Now, what examination was given the individual eggs? [fol. 198] Were they candled?

A. Candles. We had portable candling machines and the inspectors carried them with them to every place that they went.

Q. And did they click them, too?

A. No.

Q. Just candled them?

A. Candled them.

Exam. Mullen: Mr. Piehl, where were these cases at the time you inspected them, in the car or on the platform?

The Witness: In the car.

Exam. Mullen: After being unloaded?

The Witness: Except in the very few instances they were inspected on the platform, but the inspector determined that the actual cases went into the car.

By Mr. Matson:

Q. How were these eggs billed, Mr. Piehl, as rehandled——

A. The majority of them were billed as rehandled and repacked. Out of the six cars there were three cars that were billed as graded eggs.

Q. Would you pick those out in this table?

A. Yes, sir. April 23, 1949, a car from Dyersville, Iowa.

Mr. McDonald: There are two of them.

The Witness: The second car, April 27, 1949, a car from Mason City, Iowa. May 19, 1949, a car from Mason City, Iowa.

By Mr. Matson:

Q. And all of the other cars, do I understand you to say, [fol. 199] were billed as rehandled?

A. There were 44 cars billed as rehandled and repacked, nine cars billed as rehandled and repacked and the inspector said that most of the eggs in these cars had been rehandled and repacked in substations away from the rail head, and then trucked in. Four cases, in some cases billed as rehandled and repacked, and balance as graded eggs. In other words, they were mixed.

Q. What was the destination of these shipments?

A. Practically all of them went to New York. I believe there was one car that went to Somerville, Massachusetts. They were not picked—I might explain that. It just happened that as the men were going around the cars from Iowa moving by rail were moving to New York.

Q. They just happened to be the cars that happened to be on hand?

A. That is right.

Q. When your inspector came. Now, were these same cars examined again in New York?

A. I don't have the record of that. We didn't follow that up. Our test was merely to determine the broken eggs in the cars at the time of loading. Of course, that can be determined by whether the damage that was developed at New York or the extent by the records at New York. We didn't follow them up.

Q. I presume you have the car numbers on these?

[fol. 200] A. I have.

Q. Could you find out whether any claims were filed on these cars?

A. Well, that would be quite a job, 60 cars, if I should follow them up. I think that would be——

Q. I think it would be very helpful, though, to see what happens if we have an origin inspection here and then a destination inspection on these same cars. It is a lot more valuable than just the origin inspection alone.

Mr. Knowlton: I suggest that he can do that himself with the Department of Agriculture. They make these inspections at origin and destination. They can couple them together and put that in their case.

Commr. Mitchell: Of course, that wouldn't, Mr. Matson, have anything to do with the purpose of this exhibit, would it? It might be interesting to have it. I assume that this exhibit is introduced for the sole purpose of showing that there are cracked or stained eggs in repacked and rehandled eggs.

Mr. Matson: Yes, I think that if we could follow these through to market, though, we might find that there are no claims filed on any of those cars in spite of the fact that some of these cars show, well, almost as much as five percent——

Commr. Mitchell: And I suppose each side has a right to present their own case as they see fit. I think that this is introduced for one purpose only, it seems to me. It [fol. 201] would be interesting to have it, but they haven't got it.

Mr. Matson: If they don't want to follow these up——

Commr. Mitchell: If they will produce it, well, we will be glad to have it.

By Mr. Matson:

Q. Now, Mr. Piehl, how was the bill of lading signed for these cars? Was that a clean bill of lading signed?

A. Well, I would have to answer from experience only that it was shipper's load and account, I am sure.

Q. But there were no exceptions to the condition of the shipment when the shipment was received by the railroad?

A. No.

Commr. Mitchell: Did you say no?

The Witness: No. I will make the definite statement—I am looking at a weighbill, here, and it shows SLC, so it was billed shipper's load and account.

By Mr. Matson:

Q. And this damaged condition that you have detected here was not taken into consideration in the station records at origin?

A. I don't think it was. I don't know that. I didn't make the inspection myself, but our inspectors were to get evidence to show that there were broken eggs in the cases at the time that they were loaded, and I don't believe

they went over to the station and put a notation on the bill of lading that there were so many broken eggs in the car.

Q. Do you have the weighbills on all these cars, or is [fol. 202] that just one random car you happen to have here?

A. Well, I have the data. If I don't have it here I have it in my office from which this exhibit was made.

Q. And do you also have available the information as to the condition of these cars at destination?

A. I do not have that.

Q. You don't have that? Very well. Thank you.

Commr. Mitchell: Further cross examination?

Mr. Morken: Yes.

By Mr. Morken:

Q. Mr. Piehl, who were the shippers on these, as far as the group? Were they packinghouse shippers or were these independents in these towns or were they men loading their own cars or——

A. Well, it was just the general shippers from Iowa. There were some forwarders and some packinghouses, some of the packers such as Armour and Swift, and I assume—I am assuming on Swift—I think there was a car from Armour in here, but otherwise regular egg shippers from the state of Iowa. They happen to be all Iowa shippers.

Q. Who is the forwarder?

A. Oh, I—if I have a car on here from Dubuque I would say it was——

Commr. Mitchell: Well, you are guessing at it, aren't you?

The Witness: I am guessing.

Commr. Mitchell: If you know, all right. If you don't [fol. 203] know, say so.

By Mr. Morken:

Q. There is one car from Minnesota. Do you know whose car that was?

Commr. Mitchell: Do you know or don't you know?

The Witness: I will look at my record, Mr. Commissioner, if you will allow me the time. I will see if I can find it and furnish it to the man. Yes, I have the name of the shipper.

By Mr. Morken:

Q. Who was it?

A. T. G. Produce Company.

Q. They were shipping their own eggs, then, is that correct?

A. Evidently. I don't know that.

Q. You don't have any record here where an impartial forwarder that would accept these from a common carrier was shipping, if?

A. I can't answer.

Q. Where they would make their own inspection before they would accept these eggs?

A. I can't answer that question, no.

Mr. Morken: That is all.

Commr. Mitchell: Thank you. That is all.

Mr. Knowlton: Will this exhibit be received?

Commr. Mitchell: Is there objection to the admission of this exhibit? It is received.

(Respondents' Exhibit No. 15, Witness Piehl, received in evidence.)

Commr. Mitchell: Call your next witness.

(Witness excused.)

[fol. 204] C. R. Nelson was sworn and testified as follows:

Direct examination.

By Mr. Smith:

Q. Is your name C. R. Nelson and you reside in Duluth, Minnesota?

A. Yes, sir.

Q. Proceed with your statement.

A. I have been employed by the Northwest Dairy Forwarding Company for some 22 years, the last 16 of which

I have been vice president of that company. During this entire period my duties, among others, have included the routing of traffic, the handling of rate matters and the collection of claims from carriers and the payment of claims to our shippers.

Mr. Smith: May these exhibits be identified?

Commr. Mitchell: Yes, they will be identified as Nos. 16 and 17.

(Interveners' Exhibit Nos. 16 and 17, Witness Nelson, marked for identification.)

Commr. Mitchell: Go ahead, Mr. Nelson.

The Witness: The Northwest Dairy Forwarding Company since its formation has been a forwarder only of dairy products, that is butter, eggs, cheese and dressed poultry, from Wisconsin, Minnesota, North and South Dakota and Iowa to points in Illinois, Massachusetts, Minnesota, New Jersey, New York and Pennsylvania. The Northwest Dairy Forwarding Company was granted [fol. 205] a permit covering these operations responsive to its application in ICC No. FF-94 by this Commission, that proceeding being reported at 260 ICC 546.

The major portion of the tonnage forwarded by Northwest Dairy Forwarding Company is obtained in rural communities from small creameries and produce dealers who do not have sufficient tonnage to ship in carload lots nor storage facilities to accumulate such tonnage. The service afforded by Northwest Dairy Forwarding Company permits such shippers to use an economical and expedited service on dairy products from the producing areas in the Northwest to the heavy consuming areas at Chicago and in Official Classification Territory.

The manner in which Northwest Dairy Forwarding Company operates may be briefly summarized as follows: It collects at certain assembly points such as Minneapolis, Minnesota, and Madison, Wisconsin, less than carload or less than truckload shipments of dairy products for consolidation into carload or truckload lots for movement to destination. Its rates and charges for its services are published and filed with the Interstate Commerce Commission and, generally speaking, are somewhere between

the less than carload or less than truckload and the truckload or carload rates from first origin to final destination.

Since the formation of the Northwest Dairy Forwarding Company, we have always preferred the movement of shipments entrusted to our care by rail. Until the revised provisions published in Supplement 2 to [fol. 206] Consolidated Classification No. 18 setting up the new rules for the collection of damage claims on carload shipments of eggs, became effective, our company moved substantially all of its egg business by rail east of Chicago. After that time it has been forced to divert its egg tonnage to truck lines. This diversion was necessitated by the fact that by tariff publication we hold ourselves out to assume full liability for the payment of claims on eggs entrusted to our care, regardless of what method these shipments may move into or out of the consolidation points. We were forced to either revise our own tariff rules to reflect the basis published by the rail lines or to divert egg shipments to truck routes. Since we are not alone in the dairy forwarding field, for competitive reasons it was impossible to adopt the basis used by the rail carriers in the settlement of egg claims, and we had no alternative but to go to a truck movement.

Prior to the second world war the Northwest Dairy Forwarding Company did not file any great volume of claims on shipments moving via either all rail or combination truck-rail routes. This situation was radically changed for the worse during the war and the period following the war up to the present time. In Exhibit No. 16, which is taken from records of our company and to the best of my knowledge is true and correct, I compare our claim experience on eggs shipped to New York by our company for the months of January, 1942, with our experi- [fol. 207] ence in January, July and October, 1947. The exhibit shows the date of the shipment from the consolidation point, the car number and origin of the car, the contents of the car, the mode of transportation used to get the shipment to the origin of the consolidated car, the distance from origin point to consolidation point when trucked, and the damage which accrued.

Our experience for the month of January, 1942 is depicted on pages 2 to 5 of the exhibit. For example, the fifth entry on page 2 indicates in the first column that the car was shipped on January 8, 1942. The second column indicates that these shipments were loaded at Carlton, Minnesota in FGE Car 18258. The third column shows the contents of the car, which consisted of three different lots of eggs amounting to 121, 90 and 283 cases. The fourth column indicates that one lot of 121 cases moved in by truck to Carlton, the other two lots consisting of 90 and 283 cases moving in by rail. The fifth column of the exhibit indicates that the truck shipment of 127 cases moved 19 miles by truck to Carlton. The last column indicates that a claim was filed in the amount of $8.06, the damage being chargeable against the 90-case lot moving in by rail to Carlton. For January, 1942, our records do not disclose the number of cases which were damaged but only indicate the total amount of the damage for which claims were filed.

Our claim experience during January, 1947 is set forth on pages 6 to 10 of the exhibit and is set up in the same [fol. 208] way as the January, 1942 showing just referred to, with the sole difference that in 1947 our records usually disclose the number of damaged cases as well as the amount of damage on which claims were filed. Our experience during July, 1947 and October, 1947 are set forth on pages 11 to 15, inclusive, and 16 to 20, inclusive, of the exhibit.

The information contained in the exhibit is summarized on page 1. The first line on page 1 of the exhibit shows the total number of cases shipped for the months including the exhibit. The next two lines show the number of cases of rehandled and repacked at rail origin and the number of cases of rehandled and repacked eggs trucked to rail origin. The claims filed on all eggs in dollars and cents are shown in the fourth line on this page.

I wish to direct particular attention to the staggering increase in dollars over the claims filed in January, 1942, (which amounted to less than $200) in the claims filed in January, July and October of 1947 which amounted to slightly less than $2000 in January, over $5000 in July, and over $8000 in October. The average damage per case

shipped in January, 1942 amounted to 2.2 cents and reached the shocking figure of 76.6 cents in October, 1947.

The next block on this page shows our claim experience on eggs repacked and rehandled at rail origin. Approximately the same number of cases of eggs were shipped in [fol. 209] October, 1947 as in January, 1942, slightly over 2800 cases, but in the latter period the claims filed exceeded $2300, whereas in January, 1942 the claims amounted to but $116.21. The average figure per case increased from 4.6 cents in January, 1942, to 81.1 cents in October, 1947. This comparison is between shipments of eggs moving entirely by rail and is indicative of the deterioration in rail service which resulted during this period.

I do not recall the exact difference in price level between January, 1942 and October, 1947, but during the greater part of this period, the price of eggs was held down by OPA ceiling prices which varied during different periods of the year. Probably the October, 1947 price was something in excess of the January, 1942 price because October is a low egg production month.

However that may be, manifestly the October, 1947 price was not 1800 percent of the January, 1942 price, which is about the percentage relationship of claims filed by our company in these months and the principal, if not the sole reason for this increase, is attributable to the manner in which the rail lines handled egg shipments.

The next block of the exhibit shows the claim experience of my company on eggs which were rehandled and repacked and trucked to the point of rail origin. In January, 1942, 5466 cases were handled in this manner on which claims in the amount of $68.48 were filed, the average amount per case shipped being 1.3 cents. By [fol. 210] January, 1947 this average figure had risen to 19.7 cents, reaching 69.9 cents in July, 1947 and 76.4 cents in October, 1947. These figures again show the results of the rail lines manner of handling eggs on claims filed.

I desire to compare at this time our experience on claims of eggs rehandled and repacked at rail origin with eggs rehandled and repacked and trucked to rail origin. The figures shown in this block of the exhibit indicate no

connection whatever between the point where the shipments were rehandled and repacked and the resulting claims. That is, in January, 1942 on eggs repacked and rehandled at rail origins, claims per case average 4.6 cents, whereas on eggs which were trucked to the rail origin points the average figure per case shipped amounted to 1.3 cents.

The same result is reached by a comparison of like figures for January, July and October, 1947. In January, 1947 while the average damage figure per case shipped of 19.7 cents for eggs trucked to rail origin exceeds the 15 cents per case average on eggs rehandled and repacked at rail origin, still no relationship, one to the other, is evident. The average damage figures per case for July and October, 1947, on eggs rehandled and repacked at rail origin exceeds the comparable averages per case on eggs which are rehandled and repacked and trucked to rail origin.

From this showing I am forced to the conclusion that the preponderant cause of damage resulting to egg shipments [fol. 211] comes from improper rail handling and has no relationship at all to whether or not those eggs are repacked at rail origin or repacked at other points and trucked to the point where the rail shipment originates. Indeed, if the situation revealed by these figures were to be reflected in a tariff publication there might be some force to an argument that eggs which are trucked to the rail origin point are less liable to damage and should receive more favorable treatment than eggs which are rehandled and repacked at rail origin.

No figures are shown indicating our experience in 1948, primarily because the exhibit was prepared shortly after the effective date of the rules under investigation at which time our records for 1948 were not yet available in usable form. However, our experience in 1948 is substantially the same as that of 1947. I should state, however, that since the effective date of the rule in question we have little experience with rail handling because we have diverted substantially our entire movement to truck routes. Incidentally, our figures for the year 1948 might not be typical because we began to divert eggs to truck routes in

early April at the request of eastern receivers because of the high ratio of damage claims on eggs.

Exhibit No. 17 shows the receipts for shell eggs at Boston, Chicago, New York and Philadelphia for the year 1947 and the first 11 months of 1948 by truck and by rail. The first page of the exhibit shows the movement in [fol. 212] cases by months, together with the percentage moving by rail and by truck. On page 2 of the exhibit is shown in graph form the information contained on the first sheet. The source of the information is United States Department of Agriculture reports. The purpose of the exhibit is to show the shift of the movement of eggs from rail to truck because of the exceptionally bad claim experience on eggs moving by rail. It is significant to note that during the months of March, April, June, July and August, 1947, rail shipments exceeded truck shipments. During the remaining six months of that year, truck shipments were in excess of rail shipments. However, in 1948 rail shipments exceeded truck shipments only in the months of June and July.

The second page of the exhibit graphically illustrates the effect of the rule under investigation on the movement of rail eggs. Rail shipments laid out on the graph after July, 1948 fall sharply from 563,000 cases in that month to 207,000 cases in November, and in the latter months the rail shipments fell to but 25½ percent of the entire movement, the lowest in the one year eleven month period.

The rules under investigation of this case, even if reasonable, seem to me most difficult to police by either the rail lines or their inspection bureaus. This is particularly true in cases where a produce company might have a plan at rail origin at which it also accumulates shipments of eggs which are trucked into that plant. In saying this, I do not lose sight of the fact that probably [fol. 213] the great majority of shippers would make every effort to comply with the published rules in making rail shipments of eggs, but I think it most undesirable to have any tariff provisions in effect which will permit manipulation by the very small minority who might take advantage of the rule. There is no way in the world that a transportation employee or an inspection bureau

employee can look over a carload shipment of eggs and determine whether or not that shipment was or was not packed at the point of rail origin if the shipper is dishonest enough to execute a certificate to the effect that they were packed at rail origin.

I now want to comment on the larger question of discrimination which unquestionably arises under the rule under investigation. The difference in the matter of settling claims as between eggs rehandled and repacked at rail origin and those rehandled and repacked elsewhere and trucked to the rail origin point in cases where damage occurs is just as important as a difference in the transportation charges assessed for the movement of eggs.

I attended a hearing before the Consolidated Classification Committee at which the carriers' representatives heard the views of shippers on the rule now under investigation before it was published. At no time during that hearing did I learn how the five percent figure was arrived at. Certainly the experience of my company does not indicate that any such figure is proper as reflecting the difference in claim hazard between trucked eggs and [fol. 214] eggs which are repacked and rehandled at rail origin point. I surmise, however, that this figure of five percent was arrived at *my* merely lifting the five percent rule previously applicable in connection with the handling of claims on current receipt eggs. This figure was approved by the Commission in National Poultry Butter and Egg Association versus New York Central Railroad Company, 52 ICC 47, in connection with claims on current receipt eggs. However, from language used in the Commission's decision in that case it appears that at that time it was the custom of the trade for shippers to pack approximately 18 broken or damaged eggs into a 30-dozen case. Under those circumstances, of course, no one could make any objection to the five percent rule in connection with the rules for collecting claims on shipments of current receipt eggs. That, however, by no means justified the propriety of lifting this five percent figure and applying it on rehandled and repacked eggs merely because such eggs may be trucked to rail origin.

It is obvious, of course, that rail lines should not be required to pay claims for damage on eggs when such

damage occurs before their delivery to the railroad, and no one could quarrel with any proper rule accomplishing that purpose. The rule under investigation, however, is about as effective in curing the evil it is designed to remedy as is the expedient of cutting off a man's arm to cure a hangnail.

To my way of thinking an equitable and proper rule [fol. 215] should provide for the inspection of eggs which are received by truck by transportation company employees or inspection bureau employees in somewhat the same manner as that employed in the inspection of rehandled or repacked eggs at destination. That is, the inspection of some 20 cases out of a carload could be made and if that 20 percent showed no damage, the entire shipment could be assumed to be in good order. Where such an inspection revealed evidence of damage prior to rail transportation, the shipper should be willing either to take inspection of the entire shipment before receiving a clear receipt from the carrier, and in cases where inspections could not be made the shipper should accept some tolerance rule based on a study of actual experience with such shipments.

By Mr. Smith:

Q. Mr. Nelson, the shipments shown in your Exhibit 16—can you tell me whether or not those are the entire shipments that your company made during the months shown in the exhibit?

A. I believe they are, yes.

Mr. Smith: That is all. You may cross examine.

Commr. Mitchell: Cross examination?

Mr. McDonald: Yes, sir.

Cross-examination.

By Mr. McDonald:

Q. On page 4, Mr. Nelson, of your prepared statement down towards the end you say this comparison is between shipments of eggs moving entirely by rail and is [fol. 216] indicative of the deterioration in rail service which resulted during this period. Will you tell me

exactly what you have in mind there when you speak of a deterioration in rail service?

A. Well, when you have such a large increase in claim damage that is the only thing I could figure out, that it must be improper handling en route.

Q. In other words, is your statement based entirely on an assumption that because of the difference in the claim situation there necessarily is any change at all in the rail service?

A. Well, I am telling here what I think, I am not proving it.

Q. I am simply asking you what you mean by the phrase "deterioration in rail service," that is all?

A. There must be something wrong with the service if the claims go up to such an extent.

Q. Did you make any real investigation yourself into the actual service, or are you basing any of your testimony as such in that respect entirely on your reaction to your claim experience?

A. I am basing it on our claim experience.

Q. On the next page, five, about a third of the way down you say the principal if not the sole reason for this increase is attributable to the manner in which the rail lines handled egg shipments. Did you make any real investigation yourself to know how the rail carriers actually handled the shipments or, again, is that simply based on your reaction to the fact that if you have two or three or 200 times as many claims now as you had [fol. 217] one or five years ago, of necessity that must be the fact?

A. We have put impact recorders in a number of cars for periods of times in 1942 and 1943, and every one showed an impact from eight to twelve miles an hour. We have had cars loaded by the carriers themselves. They have inspected our loads. On the same cars that the impact recorders were put in.

Q. Is that the extent, though, of any investigation that you have made or might be personally familiar with as to the actual rail handling of egg shipments?

A. Well, that gave me an opinion. That is what I based my opinion, on the experience shown by these impact recorders.

Q. Based solely on that experience that you have spoken of?

A. That is right.

Q. Apart from that, it is based entirely on your evaluation of what egg claims show, the increased egg claims show, is that correct?

A. That is all I can base it on.

Q. On page 6, about one-quarter of the way down, you say that some good showing "I am forced to the conclusion that the preponderance cause of damage resulting to egg shipments come from improper rail handling." The same answer to the same type of question?

A. I think so. It is just a repetition.

Q. You haven't really made any investigation that would enable you to give anything other than those that you [fol. 218] have already made?

A. No.

Q. I am a little bit confused by the paragraph starting a little more than half way down, there.

A. What page?

Q. Same page, excuse me, page 6. You say that no figures were shown for your experience in 1948 because the exhibit was prepared shortly after the effective date of the rules under investigation. Then later on, I guess, you say two or three other things. However, your experience is substantially the same as that of 1947, and then you go on to say that 1948 wouldn't be typical because you trucked the eggs. Wouldn't it have been proper and fair to omit all reference to 1948 so far as you are concerned?

A. Well, I just went in to explain why I didn't produce 1948 figures. I don't see anything wrong with that.

Q. Well, the latter part of that paragraph——

Commr. Mitchell: Pardon me, but I thought you didn't start trucking until this five percent rule went in, which was July of 1948?

The Witness: No, we started some trucking in April.

Commr. Mitchell: It wasn't, then, this tolerance rule that drove you into trucks?

The Witness: It drove the rest of it to trucks.

Commr. Mitchell: What?

[fol. 219] The Witness: It drove the rest of it to the

trucks. That was only one New York shipper that we were handling by truck in April, between April and July. Then the rest of them went to truck.

By Mr. McDonald:

Q. In the latter part of this paragraph, the last sentence, you speak of eggs that were diverted to trucks early in April. That is what the Commissioner just spoke to you about, I presume?

A. Yes.

Q. You referred to eastern receivers. Would they be entirely located in New York?

A. That is right.

Q. Would that be entirely one receiver, or would there be more than one?

A. I believe we had one or two. I don't remember the exact number. I know there was either one or two.

Q. What about your shipments to points other than New York? Have they continued to move by rail?

A. No.

Q. What other eastern cities do you ship to other than New York?

A. We have some to Philadelphia.

Q. Yes, where else?

A. Washington, D. C.

Q. Any other point?

A. Boston.

[fol. 220] Q. Any others?

A. No, that is all.

Q. Those shipments are all handled now by truck? Do I correctly understand that?

A. That is right.

Q. What was the reason for the diversion of that traffic to the trucks?

A. I don't know. We shipped it by truck on request of the receiver.

Q. So the tolerance rule or anything at all that you have testified to with respect to the New York shipments had no application to these other points or didn't—they were not the direct cause of your diversion; is that correct?

A. I don't know, because we were only following routing instructions of the receiver.

Q. You didn't make any similar study with respect to claims to points other than New York?

A. No.

Q. Well, Mr. Nelson, do you want to change, then the statement that appears in the last sentence appearing on page 6, the paragraph that begins a little more than half way down the page and reads, "Incidentally, our figures for the year might not be typical because we began to divert eggs to truck routes in early April at the request of eastern receivers because of the high ratio of damage claims on eggs"?

[fol. 221] A. Why do you want me to change that?

Q. Well, haven't you just told me that wasn't the fact with respect to anything other than shipments to New York?

A. That is what I am talking about, New York, here.

Q. In other words, that, then, is limited entirely to shipments to New York?

A. That is right.

Q. You say on the top of page 7, speaking of the source of the information shown on page 7, that the source of that information is the United States Department of Agriculture reports. Then you continue and say that the purpose of the exhibit is to show the shift of the movement of eggs from rail to truck because of the exceptionally bad claim experience on eggs moving by rail. Do you know that to be the fact insofar as anyone's eggs is concerned other than those of your own concern?

A. No, I don't.

Q. So you should have limited that statement, also, shouldn't you?

A. Possibly.

Q. Or omitted it entirely?

Mr. Smith: Are you satisfied with the statement as made?

Mr. McDonald: I submit, Mr. Commissioner, the witness is answering that. He has already answered the question.

By Mr. McDonald:

Q. I would like to be sure that I understand your discussion of the graph as it appears on page 2 of your Exhibit

[fol. 222] 17. I wonder if you would mind in your own way explaining that in a little more detail for me?

A. What part is it you don't understand?

Q. I don't particularly understand the lower portion of it where you have a solid line and "truck" appears on the top and "rail" on the bottom.

A. Oh, this graph on the top half——

Q. Lower half of the page.

A. Well, I believe it indicates the percentage of your truck receipts by months for the years of 1947 and 1948. Isn't that true?

Q. I don't know, sir. I am asking you. I may be dense, but I don't get it. What is this solid line in the bottom part of the exhibit? Is that a truck movement or a rail movement or both or what?

Mr. Smith: May I interpose for clarification, counsel? That is merely a way of dividing up the pie. The upper part shows the proportion of the truck movement to the total, whereas the lower shows the proportion of rail movement.

Mr. McDonald: Well, can you tell us from that or do you mean to convey the impression from that that, as I gather from your testimony, the amount of traffic the railways handled fell off considerably because of their change in tariff? Is that the import of this?

The Witness: No, I think that it fell off on account of [fol. 223] the application of the five percent rule.

By Mr. McDonald:

Q. Well, isn't it a fact, then, that the bottom part of this exhibit would indicate that the total traffic fell off regardless of whether it was handled by rail or truck? Wouldn't that trend roughly correspond to the trend portrayed by the upper half of the graph?

A. I don't know what you mean, there.

Q. How did you plot the second line in the lower half of that?

A. What about it?

Q. I say, how did you plot it? How did you arrive at that line?

A. Percentagewise I believe. It shows your percentages on the left hand side.

Mr. Smith: That is percentage of the total movement.

Commr. Mitchell: Can you tell us, Mr. Nelson?

The Witness: I beg pardon?

Commr. Mitchell: Could you describe what this bottom part means?

The Witness: Of the total tonnage of truck and rail receipts of the shell eggs at the four markets it shows what percentage of those receipts moved in by truck.

Commr. Mitchell: Well, if I understand you correctly, you would start over here in January with about 48 percent going by rail, is that right?

The Witness: That is right.

Commr. Mitchell: Then your line goes up until you reach [fol. 224] in July somewhere between 50 and 60 percent?

The Witness: That is right.

Commr. Mitchell: Then you go on down to August, September, October, and you start up again in November and December. In January and February and March you have a sharp upturn. Now, this is all rail, is that right?

The Witness: That is right.

Commr. Mitchell: You start falling off according to this in June of 1948?

The Witness: That is right.

Commr. Mitchell: That is when this tariff went into effect?

The Witness: Yes, it went into effect in July.

Commr. Mitchell: All right.

Is that all?

Mr. McDonald: No, sir.

Commr. Mitchell: Let's go along. It is getting late.

By Mr. McDonald:

Q. These figures, I take it, are based now not only on your own companies but based on the Department of Agriculture records that you referred to, isn't that correct?

A. Yes.

Q. Now, on page 7, the paragraph beginning about three fifths of the way down, there, you say the rules under in-

vestigation of this case, even if reasonable, seem to you most difficult to police by either the rail lines or their inspection bureaus. Did you ever have any experience in in-
[fol. 225] specting these shipments as a railroad employee or an inspection bureau employee?

A. I didn't get your question, sir.

Mr. McDonald: Would you read the question, please?

(The question was read by the reporter.)

The Witness: No. You mean me acting as a railroad inspector?

By Mr. McDonald:

Q. Yes?

A. No.

Q. Then on what do you base your expressed opinion that it would be difficult for rail lines or inspection bureaus to police them?

A. Well, you have eggs originating at too many points for the carriers to give the proper service on inspections.

Q. That is simply your personal opinion rather than an expert opinion by anyone who has had inspection experience, isn't that true?

A. It is based on my opinion, yes.

Mr. Smith: What is the last part of that answer?

The Witness: It is my opinion.

By Mr. McDonald:

Q. Now, further down in that statement you say you think it most undesirable to have any tariff provision in effect which will permit manipulation by the very small minority who might take advantage of the rule. Do you know anything about anybody who does manipulate it?

A. No, I don't.

[fol. 226] Q. Do you know that there is any manipulation?

A. No, I don't.

Q. How could there be manipulation from your personal standpoint?

A. If a fellow ships a car by rail and certifies that the

eggs are all rehandled and repacked at the rail point where, as a matter of fact, they are not rehandled and repacked at the rail point then he is getting a hundred percent coverage on the claim, isn't he, if there is any damage?

Q. Do you think that the ordinary shipper of eggs would resort to that type of practice?

A. No, I don't.

Commr. Mitchell: It would be a violation of the Elkins Act, wouldn't it?

The Witness: Beg pardon?

Commr. Mitchell: It would be a violation of the Elkins Act, wouldn't it?

The Witness: Yes.

By Mr. McDonald:

Q. In your opinion, is there any real difference in the possibility of manipulation under the present tariff versus the former one?

A. Well, in my opinion the rule can't be policed properly.

Q. Do you think the former rule was one more susceptible of satisfactory policing from an inspection bureau standpoint?

A. Well, under the former rule you got a hundred percent [fol. 227] coverage if they came in by truck, rehandled and repacked out in the country, or whether they were rehandled and repacked at the rail head. It didn't make any difference.

Commr. Mitchell: Further cross examination?

Let's proceed.

Mr. McDonald: Yes, sir.

By Mr. McDonald:

Q. On page 9, Mr. Nelson, about the middle of the page you express an opinion as to an equitable and proper rule with respect to inspection. I am not sure that I understand how, granting for the sake of argument you were correct in your prior contention, that it would be impractical to inspect, that your suggestion would be any more practical. Could you explain that?

A. You mean where I said before that I don't think it could be policed?

Q. Yes.

A. That may be true, but I am just trying to suggest some way of trying to work this thing out. I don't think the five percent is right, but maybe something smaller is right. I don't think any of us know, but it is everybody's problem, I think.

Q. That isn't quite what you said, there, in the middle of page 9, though, is it?

A. Where I mentioned an equitable or proper rule for the inspection?

Q. You answered the prior question, didn't you?

[fol. 228] A. Yes.

Q. One more question. If we were to have what you would consider an equitable and proper rule for the inspection of eggs, who would you think should bear the cost of that inspection?

A. Well, maybe it should be partly borne by both, I don't know. That is something to be worked out.

Q. You have nothing more definite than that?

A. No.

Mr. McDonald: That's all.

By Mr. Knowlton:

Q. Mr. Nelson, who handles the claims on your shipments at New York? I am not asking for names. Is it a trucker or the receiver or just generally?

A. Up until the time that the RPIA changed their system of issuing inspection reports—I think that system was changed in January of '48—prior to that time all claims filed against the shipments handled by ourselves were sent to me out here and I filed the claims in turn with the rail lines. After the new system was set up by the RPIA our man in New York handled all the claims.

Q. Has he asked you to try and get back to the rails?

A. Oh, he would like it better, yes.

Q. Now, you recognize the necessity of uniform tariffs for all, don't you?

A. That is right.

[fol. 229] Q. And you recognize that if competitors are receiving claim payments on a highly technical basis you must do likewise or suffer?

A. That is right.

Q. I understand you are leaving tonight?

Commr. Mitchell: We are going to leave when we get through with cross examination.

Mr. Knowlton: I was just asking if he had to leave.

The Witness: I don't have to.

By Mr. Knowlton:

Q. Would you be willing to try out a uniform normal expectancy of shell damage at origin of two percent on bona fide rehandled eggs trucked or otherwise?

A. That is right.

Mr. Knowlton: That is all, thank you.

Commr. Mitchell: You say you would or what?

The Witness: Yes, I would.

Commr. Mitchell: Further cross examination?

By Mr. Morken:

Q. Mr. Nelson, does the railroad furnish you any of those thousands of cars that have the spring and shock absorber set ups in them to ship your eggs in?

A. No, we take what we get.

Q. In your 20 years do you usually get those type of cars or do you just get straight cars that haven't any shock absorber systems?

A. We don't look into that. If we get a car with full [fol. 230] floor racks we are satisfied.

Mr. Morken: That is all.

Mr. Matson: One question, Mr. Commissioner, if I may.

By Mr. Matson:

Q. If this so-called two percent tolerance suggested by counsel were instituted would you be in position to pass that back to your shippers or would you have to absorb that yourself?

A. It would be absorbed by ourselves unless we changed our tariff to conform with the rail tariff.

Commr. Mitchell: Why do you want to change back from the trucks to the rails? That is something I can't quite understand.

The Witness: Well, trucking into New York isn't entirely satisfactory for a lot of receivers.

Commr. Mitchell: You don't have any claims with them?

The Witness: Oh, yes, we have claims.

Commr. Mitchell: Not to amount to anything?

The Witness: We have some.

Commr. Mitchell: Do you?

The Witness: Nothing like we had.

Commr. Mitchell: You go in there *in nice*—on the truck to your consignee?

The Witness: In nice shape, you say?

Commr. Mitchell: In good condition?

The Witness: Oh!

[fol. 231] Commr. Mitchell: I won't say what shape it is in.

The Witness: We don't have near the claim damage that we had by rail, but the set-up in New York—your majority of receivers who receive the class of eggs, or the kind of shipments that we handle, have small places of business, and they are not in position to accept a two- or three-hundred-case shipment into their place. They are set up to operate off the railroad pier to give delivery orders to the truckmen. They will take in a 10-case sample and sell those eggs on that sample and then give the truck an order to deliver it to the buyer.

Commr. Mitchell: You are interested in the rails handling claims to New York?

The Witness: Yes.

Commr. Mitchell: And you admit that there are claims in going by truck?

The Witness: Oh, yes.

Commr. Mitchell: You don't know, offhand, what those claims will run? Are they material, to amount to anything?

The Witness: No. No, we have had some substantial claims, but it has all been by overturning a vehicle or theft——

Commr. Mitchell: You don't file claims against truck companies, do you?

The Witness: Yes.

Commr. Mitchell: Unless it be a complete loss you don't [fol. 232] file claims, do you?

The Witness: Yes.

Commr. Mitchell: Would you file a small claim like twenty-five or thirty dollars?

The Witness: Yes, sir.

Commr. Mitchell: You do right now?

The Witness: Yes, sir.

Mr. Zearfaus: Mr. Commissioner, may I ask a question?

By Mr. Zearfaus:

Q. How do you reconcile your statements to the Commissioner that it was the eastern shipper who told you to ship to New York, on account of the claim situation, by truck?

A. That is a fact. That is the only reason we started shipping in April, on request of the shipper.

Commr. Mitchell: He said he had only one consignee down there.

The Witness: It wasn't on account of the rule, because the rule wasn't in effect until July.

By Mr. Zearfaus:

Q. You think the situation would change, then, with the change in the tariff rule to a two percent tolerance, that your receiver would be willing to take the shipments by rail?

A. I think they possibly would. It all depends, of course, on the amount of claim damage that they have.

Commr. Mitchell: Well, thank you, Mr. Nelson.

(Witness excused.)

[fols. 233-235] Mr. Smith: I will offer Exhibits 16 and 17.

Commr. Mitchell: Is there any objection to these exhibits? If there is no objection they will be admitted.

(Interveners' Exhibit Nos. 16 and 17, Witness Nelson, received in evidence.)

[fol. 236] PROCEEDINGS—July 27, 1949

Commr. Mitchell: The hearing will come to order, please.

Before we start the hearing this morning, I want to announce that we will have a hearing in New York City. The exact date we are not able to announce at this time

Personally, I am not satisfied with what progress has been made in this case. The railroads have not reduced these claims as they must be reduced. It must be evident to everyone, even the railroad people, that they are losing money on this business now moving to New York. That means these claims have got to be reduced.

We are going to New York. We want the cooperation of everyone, including the railroads. We want the railroads to make an analysis of those claims, come in and show us why they are paying claims of that amount. The date will be announced later.

Are you ready, Mr. Matson?

Mr. Matson: I would like to call Mr. Hamann.

HENRY G. F. HAMANN was sworn and testified as follows:

Mr. Matson: If the Commissioners please, we would like to identify four exhibits which will be presented by Mr. Hamann. They are being distributed now.

The first one is a set of pictures entitled United States Standards for Quality of Individual Shell Eggs.

Commr. Mitchell: We will mark that as Exhibit 18.

[fol. 237] (Dept. of Agri. Exhibit No. 18, Witness Hamann, marked for identification.)

Mr. Matson: The second bears in the upper right hand corner date of December 1, 1946, and is entitled United States Standards for Quality of Individual Shell Eggs.

Commr. Mitchell: It will be marked Exhibit 19, for identification.

(Dept. of Agri. Exhibit No. 19, Witness Hamann, marked for identification.)

Mr. Matson: The third bears date of February 1, 1948 and is captioned Tentative U. S. Specifications and Weight Classes for Wholesale Grades for Shell Eggs.

Commr. Mitchell: It will be marked Exhibit 20 for identification.

(Dept. of Agri. Exhibit No. 20, Witness Hamann, marked for identification.)

Mr. Matson: The fourth bears date of December 1, 1947, and is captioned Tentative U. S. Specifications and Weight Classes for Consumer Grades for Shell Eggs.

Commr. Mitchell: It will be marked Exhibit 21 for identification.

(Dept. of Agri. Exhibit No. 21, Witness Hamann, marked for identification.)

Mr. Knowlton: We have no objection to these exhibits, and we have no objection to them being received right now.

[fol. 238] Mr. Matson: I offer them in evidence now, then.

Commr. Mitchell: There being no objection, they will be admitted.

(Dept. of Agri. Exhibits Nos. 18 through 21, inclusive, Witness Hamann, received in evidence.)

Direct examination.

By Mr. Matson:

Q. Mr. Hamann, will you state your full name?

A. Henry G. F. Hamann. I am chief of the dairy and poultry inspection and grading division, production and marketing administration, United States Department of Agriculture, in Washington.

Q. How long have you been grading and inspecting eggs?

A. I have been actively engaged in the grading, inspection and marketing of shell eggs since 1922.

Q. Are you familiar with the inspection and grading of eggs commercially at all points in the progress of eggs from the producer to the consumer?

A. Yes, I am.

Q. Will you describe briefly what your different exhibits show?

A. The exhibit marked No. 18 represents, as indicated, the United States standards for quality of individual shell eggs, which are the basis of determining the condition and quality of eggs in the various categories indicated, ranging from double "A" quality to C quality. These [fol. 239] standards for individual quality represent or serve, rather, as a means of measurement of quality.

Exhibit No. 19 is the definitions of terms which are utilized by the grading service in determining the quality of shell eggs as set forth in Exhibit No. 18.

Q. These are the standards which are employed by the inspectors under your jurisdiction in the Department of Agriculture?

A. That is correct, sir.

Exhibit No. 20, they are indicated here as tentative U. S. specifications and weight classes for wholesale grade and shell eggs, but they have recently been promulgated by the Secretary of Agriculture as the official U. S. specifications and weight classes for wholesale grades for shell eggs.

These are the grades that are employed by our staff in identifying the quality of wholesale lots of shell eggs which are offered to us for grading.

Q. What does Exhibit 21 show as distinguished from Exhibit 20?

A. Exhibit 21 shows the tentative U. S. specifications and weight classes for consumer grades as differentiated from wholesale grades. The primary difference between wholesale grades and consumer grades as utilized by the Department of Agriculture is that we do not permit any loss in consumer grades.

Q. What do you mean by loss?

A. I mean eggs that are not usable by the consumers, such as leakers, blood spots, rots, and eggs of that character.

[fol. 240] Q. How were these specifications developed?

A. The policy of the Department of Agriculture in de-

veloping specifications is to work and consult closely with all segments of the industry in discussing and reviewing proposed standards and grades which are contemplated for use in commercial operations by the industry.

Q. Do you have under your jurisdiction a number of inspectors, egg inspectors?

A. Yes, sir, we do.

Q. What do they do?

A. These egg inspectors or graders, as we call them, are utilized for the purpose of making gradings at the request of financially interested parties.

Q. The gradings which they make for the eggs upon such request are stated in the certificate, are they?

A. Yes, sir.

Q. What do the certificates show?

A. These certificates show the type of egg, the class of eggs. Let me say first of all, the certificate shows the applicant for the service. It shows the location of the eggs in question, be they in warehouse or on track or on the premises of the applicant. It shows the number of cases in the particular lot that is to be examined.

They show the class of eggs, whether they are large or medium or small, or whatever. The color of the egg, [fol. 241] whether white, brown, or mixed colors; whether they are natural shells or shell treated. They also indicate percentages of qualities which are found in the sample which is examined.

Q. Who pays for this grading service?

A. The grading service is a self supporting function, and the service is paid for by the industry requesting the service.

Q. Are these grading certificates issued in connection with all commercial shipments of eggs or transactions involving eggs?

A. Grading certificates are only issued on request of individuals for grading service. They are not issued on all eggs.

Q. About what proportion of the commercial eggs are graded by your department?

A. I would say, Mr. Matson, approximately 10 per cent of the total volume of eggs produced are graded by us.

Q. Is this a nation wide service?

A. Yes, sir.

Q. You inspect eggs in all 48 states?

A. Yes, sir.

Q. Now, will you explain the procedure generally followed by your graders in the inspection of eggs?

A. After we receive an application for grading service, we contact the particular firm or individual or organization requesting that service and ask them to make available to us the particular lot of eggs in question. We require that we have access to all parts of the lot in order that we may draw an adequate and proper repre-
[fol. 242] sentative sample. Under no circumstances do we permit the applicant to draw his own sample.. We always draw that ourselves.

There are some exceptions to that, however, where eggs are stored in bonded warehouses. We will accept the samples shown by the warehouse, since they are not directly financially interested in the product.

On carload lots we draw a sample of 15 cases at random from the lot, and we examine 100 eggs out of each case.

Q. Which eggs in the case do you examine? Any particular eggs?

A. The procedure for examining the eggs in individual cases is set forth in our instructions to graders, Mr. Matson.

Q. And what is that?

A. That is Poultry Products Memorandum No. 3.

Q. In general, what are the instructions as to which eggs to look at in each case?

A. I don't know whether I can describe the exact arrangement. If I may have a copy of that memorandum, I believe I can read it to you.

It says here the amount and order of the examinations, on page 7, paragraph B under the caption of grading: "Examine 100 eggs out of each case, using the following system in selecting the 100 eggs. Examine the three top fillers in the first case, except eight eggs in the third filler. The second, third and fourth fillers in the second c[illegible] except eight eggs in the fourth filler. The
[fol. 243] third, fourth and fifth fillers in the third case, except eight eggs in the fifth filler. The first, second

and fifth fillers in the fourth case except eight eggs in the fifth filler. And the first, fourth and fifth fillers in the fifth case, except eight eggs in the fifth filler. The eight surplus eggs in the third filler examined in each case are to be left in the same corner of each filler to eliminate any possibility of argument as to whether dirty eggs or checks in the third filler are to be accepted for grading as part of the sample or are presently not graded.

"Repeat the above order of examination for all sample cases in excess of five."

Q. What is the purpose of specifying just which eggs in the case should be examined?

A. We feel, Mr. Matson, that if we have drawn a representative sample of the lot in the 15 cases, then it also is necessary that we have a representative cross section of all eggs in that sample, and by sampling procedures which have been established as the arrangements or the method indicated here gives us a complete cross section of all the eggs that we look at in the sample.

Q. In your opinion, would any less diversified examination give a true cross section of all eggs in a lot?

A. No, sir, I do not believe it would.

Q. Now, when these eggs are inspected by your graders, [fol. 244] just what do they do? How do they go about this after they get to the eggs that they are trying to examine? How do they examine the individual eggs or lot of eggs?

A. Of course, the usual method, usual commercially accepted method of examining eggs is by candling, placing the eggs before a light which permits the light to pass through the egg so that you can identify the contents and classify it in accordance with the standards for individual eggs which are the official standards which we utilize.

As the grader classifies each egg, he segregates the various qualities which he finds and places them in individual fillers. When he completes his examination of the first case, he records his findings on what we call a grader's memorandum, indicating the various qualities found. He repeats that procedure for each case, which he examines, and totals the percentages as indicated, transposing them into the particular grade which is set forth in our official

grades for eggs either wholesale or consumer grades. He also weighs each individual case, obtaining the net weight of the eggs.

Q. How many cases of eggs in a car will be taken for sampling purposes?

A. We normally take 15 cases. If our examination of those 15 cases we find variations beyond that which might be expected in the particular car of eggs that we are examining, we will continue to take more cases until we are satisfied that we have a truly representative picture [fol. 245] of the particular car.

Commr. Mitchell: How long does it take for one of your inspectors to inspect 15 cases of eggs?

The Witness: Approximately three hours, sir.

By Mr. Matson:

Q. Is there any difference in the examination of eggs which have been in storage, any difference in procedure?

A. No, sir. We follow the same procedures on all types of eggs.

Q. What is the effect of temperature upon eggs?

A. In storage, eggs in storage are eggs which have been under low temperatures, the tendency is for the egg to appear somewhat better than it would had it been tempered out. In other words, the warm egg will more nearly reflect—I would say the egg which is at temperature above 50 degrees, between 50 and 60, will more nearly reflect the actual quality of that egg than will the egg at which temperature is below that figure.

Q. Do your graders let the eggs warm up before they inspect them?

A. Yes, sir. We require any eggs which have been under refrigeration first to be tempered out properly before grading.

Commr. Mitchell: When you talk about three hours, do you mean candling? Would you candle those 15 cases?

The Witness: One hundred eggs out of each case, sir. They have to be segregated into the various qualities. They [fol. 246] have to be recorded, the individual case has to be weighed, and recording made of it.

Commr. Mitchell: I was trying to ascertain the time element. You say that your one man can handle 15 cases of eggs in three hours?

The Witness: Yes.

Commr. Mitchell: And that is to candle the eggs also?

The Witness: Yes. You understand, of course, that is only one hundred eggs out of each case.

Commr. Mitchell: I know, but I don't think you take just the 100 at the top, do you?

The Witness: No, sir. I indicated the procedure of selection of eggs in the statement that I made here a moment ago.

By Mr. Matson:

Q. Mr. Hamann, is there any relationship between the age of an egg and its fragility and tendency to shell damage?

A. No, sir, provided that you have a normal shell you will not find any variation there in the strength of shell structure simply because the egg is a little bit older.

Q. Now, eggs are quite generally regarded as a fragile commodity. Could you enlighten us as to the relative strength of an egg, a normal egg?

A. While the egg is considered a fragile commodity, and it is, the structure of the shell is such in character that if it [fol. 247] is held in a certain position, it is almost impossible to break the shell. If you can take an egg and place on its horizontal axis between your two hands and have it exactly centered, it is impossible to crush that egg. There have been some experiments conducted with regard to that where eggs have been subjected to the blows of a hammer. I believe they will sustain 15 pounds pressure on them without any evidence of breakage.

The egg, of course, in those instances is accurately centered, and it is a perfect shell from the standpoint of the shape of the egg and the structure of the shell itself. So that the egg will sustain a considerable amount of shock before it will break.

Q. Now, if the egg were laid on its side and hit with the same hammer, would it break quicker?

A. It would break very easily.

Q. In view of that, why do we not pack eggs lo-gitudinally instead of vertically?

A. Of course, the reason for that is that the egg is a complete entity unto itself. It has inside of it all of the things that make for a chicken, if it is a fertile egg and it is hatched, therefore it is a living thing. At the large end of the egg there is an air space, commonly known as an air cell, which serves as a means of providing air to the growing chick. That air cell becomes a very important factor in commercial practice in designating the quality of [fol. 248] the egg. The membranes which are inside of the egg, which become a part of this air cell, will break down quite readily unless the egg is kept in a position with the large end up so that the air cell cannot be subjected to any damage. That is the reason, therefore, we do not recommend the packing of eggs in any position except large end up.

Q. Now, what is the difference between an egg standard and a grade?

A. An egg standard is the unit of measurement which we use to determine quality. The standards for individual shell eggs are the equivalent of our means of measurement in measuring the length of a table, for example. If we will take a ruler of 12 inches that becomes a standard of measurement. The ruler is divided into 12 component parts, which we call inches. The standard of quality for individual eggs is the equivalent of a ruler. We have four component parts in it, and they represent the four standards of quality, double-A, A, B and C. The grade for eggs is a combination of these various components of individual quality reflected percentagewise in a case or more than one case of a particular lot to be examined.

Commr. Mitchell: Apparently there isn't much difference between grades AA and grade A, is there?

The Witness: Very little, sir.

Commr. Mitchell: The air cell in grade A is a little bit larger than in the grade AA?

[fol. 249] The Witness: That is correct, sir.

Commr. Mitchell: Maybe it is a mistake to spend that extra money to buy AA eggs.

The Witness: That is a question that has been debated at some length before now.

By Mr. Matson:

Q. Now, when your inspectors find damaged eggs, is it possible to tell when that damage occurred within a point of time? In other words, can you tell whether it is fresh damage or old damage?

A. In the case of checked eggs, you can very definitely tell whether it is fresh or old damage. A newly checked shell or freshly checked shell, in many instances is almost indiscernible. However, if the check has been in that shell for any length of time, there is apparent, or what appears to be, a widening of that opening which is nothing more or less than the absorption of moisture into that cell which gives the appearance of a larger opening. Actually, it isn't, but it becomes more readily visible. Normally, you find eggs that have been checked for a period of time will develop that peculiar appearance.

Now, in the case of eggs which have been broken, from which the contents are exuding, you will find eggs that have been in that particular condition for any length of time will stick to the fillers or to the packaging material into which they are placed, whereas the freshly broken egg, of course, [fol. 250] which has not had an opportunity to dry out or where the albumen or content of the egg has not had an opportunity to dry out can be readily picked out of the container without any difficulty.

Q. Now, what is the difference between a grading inspection and an inspection for damage?

A. Well, in your grading inspection, as you term it, we look for all factors. We look for shell color, shell cleanliness, size of the egg, quality of the egg, and the other factors which represent the general quality of the lot that we are examining. That is done by both visual examination and by candling.

In examining an egg or a lot of eggs for damage only or condition, we do not candle the eggs. We examine the

individual eggs by observation and handling to determine the extent or nature of the damage in question.

Q. In other words, the inspection for damage is not as rigid an inspection as the grading inspection?

A. I wouldn't say it wasn't as rigid, Mr. Matson. I would say it does not go into as much detail from the standpoint of determinations made.

Q. Now, are you familiar with the inspections for damage which are made commercially in New York, for example?

A. Yes, sir.

Q. Will you describe how that is done?

[fol. 251] A. The cases are opened up. The lids are lifted. The lid has to be removed from the case entirely, and the individual making the examination generally lifts the top filler to determine that it is movable, is loose.

Q. Do they do that by hand or does he have an instrument?

A. No, sir, he does that by hand.

Q. Just grabs hold of the filler?

A. Grabs hold of the filler in the center and endeavors to raise it. If it comes up, he is pretty sure then that there is no damage there that has been of any extent.

He also determines whether or not there is any evidence that the egg content in the half of the case that he examines has sunken down, which might be evidence of breakage underneath, which he can't observe. In that case, of course, if he finds that kind of condition, then he has to remove all the eggs in the case, until he gets down to that layer where the damage is located.

Q. In lifting a filler, is it possible to detect a checked egg?

A. No, sir.

Q. Where does this inspection for damage take place?

A. Generally speaking, it takes place in two places. It is either in the warehouse or on these piers where the eggs are received.

Q. Now on these piers, is that a quiet location where a [fol. 252] person can click eggs and tell whether they are sound?

A. Of course, I expect that whether a place were quiet or not is a relative matter. I wouldn't be too sure that you could do a very accurate job, Mr. Matson, on one of those piers where there is any degree of activity, if you are clicking eggs to determine if they are checked or not. You could probably catch it all right.

Commr. Mitchell: Does the government have inspectors down there to check these damaged eggs on the pier?

The Witness: No, sir. We do very little of that.

By Mr. Matson:

Q. Does your department hold itself out to perform this service upon request at New York or any other point in the United States?

A. Yes, sir.

Q. The cost of that service, is that very much?

A. The cost of service for that sort of thing is the same as it would be on any other request for service that we might receive under the same conditions. The cost of service is set forth in the regulations governing the grading of dairy and poultry products. We specify the amounts which are charged under the heading of fees and charges.

Q. Give us an example of what you charge to grade a carload of eggs?

A. Yes, sir. For lots of eggs ranging from 301 to 400 packages inclusive, we charge $11. For 401 to 600 packages [fol. 253] inclusive, we charge $15, and for each additional 100 packages or fraction thereof in excess of 600, $1.50.

If the eggs are on team track, we add to that amount $3 to cover additional costs and team track inspections.

Commr. Mitchell: That means the inspection of 15 cases?

The Witness: That is right.

Commr. Mitchell: In a car?

The Witness: Yes, sir, or such other number as we may determine beyond 15 to satisfy ourselves that we have obtained a representative sample.

Commr. Mitchell: All right.

By Mr. Matson:

Q. Now, there have been a number of terms used in this hearing which have been defined variously, and I note that your exhibits contain definitions of several terms. I would like to ask you some additional definitions, though. What is your definition of current receipt?

A. A current—I believe the term current receipt, Mr. Matson, is more or less a self explanatory term. It is a term which is commonly applied by the trade to eggs which have been received from a producer and which have not received any handling. They are nest run eggs, large, medium, small; clean, dirty; checks, leakers, in all combinations.

Q. What do you mean by handling? You say they haven't received any handling, what do you mean by that?

A. Maybe we should use a better term, say processing, or [fol. 254] they haven't been classified in any particular manner.

Q. What are re-handled and re-packed eggs within the meaning generally used in the industry?

A. Re-handled and re-packed eggs as we define them are eggs which have been classified purely by observation but not by candling. They may have been rehandled from a standpoint of eliminating certain quality—not quality, but condition characteristics. For instance, they may have been rehandled to segregate the white eggs from the brown eggs, large from the small, clean from dirty, check from sound ones.

That is what we call rehandling and repacking, where they have been placed in different containers from the ones in which they were originally received.

Q. Now, what does the term graded eggs signify to you?

A. When an egg is graded, to me it means that they have been classified or segregated not only from the standpoint of external conditions but also from the standpoint of the interior quality, as well as size. In other words, I would define grading as all of the operations which are necessary to fully classify individual egg quality in any given lot of eggs.

Q. Your definition of graded eggs seems to be a little more complicated than the definition suggested on the record here yesterday. Were you here yesterday when that was mentioned?

A. Yes, I was.

Q. Now, what are storage packed eggs?

[fol. 255] A. Storage packed eggs? Storage packed eggs is a term that is commonly used by the trade to indicate the fact that the eggs have been carefully graded for quality, condition, cleanliness, and have been placed into new containers and new packing material for purposes of holding in storage.

Q. What would happen to damaged eggs if they were included in a case of store packed eggs?

A. You mean if a case went into storage?

Q. Yes.

A. Well, it would be most likely that those eggs would rot. They would deteriorate. They would either get moldy, get stuck yolks—there are any number of things that could happen to the breakdown of the egg, but they would very quickly become unusable for any purpose.

Q. Now, is that true of what is known as a blind check egg?

A. No, sir.

Q. In other words, a blind check egg could be included in a storage packed egg and it would not deteriorate?

A. Yes, sir.

Q. Now, are there other degrees of checks and cracks found in eggs?

A. Yes, there certainly are.

Q. Tell us, first, what is a blind check?

A. A blind check is an egg which has been checked inside the body of a hen and which has received another coating of [fol. 256] shell material over it before it is laid, so that when the egg is laid, technically we can describe it as a sound shell. In other words, there are no breaks in it that are particularly likely to cause the exuding of egg content. A checked egg is an egg which has been checked after it leaves the body of the bird and is an actual break in the shell, but not necessarily a break of the shell membranes.

The leaker of course is the egg where the shell is broken, the membranes are broken to the extent that you get an exuding of content of the egg.

Q. You say in a checked egg the membrane is not necessarily broken. Would you be specific about that? Is it or is it not broken?

A. It is not broken.

Q. It is not broken?

A. No.

Commr. Mitchell: Mr. Hamann, I notice in your Exhibit No. 20, as I read this, your department provides for tolerance permitted in these grade AA eggs of 7.5, is that right?

The Witness: That is correct, sir.

Commr. Mitchell: That includes checks?

The Witness: Yes, sir, that includes all tolerances, all tolerance for edible eggs.

Commr. Mitchell: And on grade A, you permit 11.7 per cent?

The Witness: Yes, sir.

[fol. 257] Commr. Mitchell: So you do recognize that there must be a tolerance in the grading of eggs?

The Witness: There is a tolerance in the grading of eggs, sir, because it is not humanly possible to remove from any lot of eggs in the candling or grading process all defective eggs.

Commr. Mitchell: Does that include also cracked eggs?

The Witness: Yes, sir.

Commr. Mitchell: You say, then, it isn't humanly possible to eliminate all the cracked eggs that you would find in cases?

The Witness: That is correct.

Commr. Mitchell: All right.

The Witness: The tolerances are set up primarily for the purposes of making allowance for human error.

Commr. Mitchell: I understand that, but I was surprised —I didn't know that you did make allowances. It interested me to find that out.

By Mr. Matson:

Q. Now this allowance for a certain number of checked eggs or eggs otherwise damaged within the classifications covered by your exhibits, do they apply in the case of eggs at the retail level?

A. Yes, sir. If you will look at the consumer grades, you will notice that we also provide tolerances as set forth in Exhibit 21 on the back of that sheet.

Q. You say that it is impossible to eliminate every [fol. 258] checked and cracked egg from a case in the process of grading and inspection of eggs?

A. Yes, sir.

Q. Now, in the case of reconditioned eggs, on the piers in New York——

Commr. Mitchell: Reconditioned eggs?

Mr. Matson: Yes, sir.

By Mr. Matson:

Q. Are you familiar with that process of reconditioning?

A. Well, I would like to have you define to me what you mean by reconditioning.

Q. Suppose you get a car of eggs in bad order in New York. As I understand it, some of the cases may be broken, and you take the goods eggs out of two or three cases, and you make one case of good eggs. That is, if your damage is that extensive. Now, by reconditioned case, I mean the case which results, the case of supposedly good eggs. In that case, are all the eggs 100 per cent sound?

A. They can't be because it is humanly impossible to do it.

Q. Would you expect to find in that case of eggs the same number or more of checked and cracked eggs than was found in the original case packed back in the country?

A. I would expect to find about an equivalent number, everything else being equal.

Q. You stated that your experience in handling of eggs [fol. 259] went back 30 years, did you?

A. Twenty-seven years.

Q. Do you recall that at that time the railroads in han-

ling carloads of eggs had a sign of some kind which they would tack up on the outside of the car?

A. Yes, sir. They had a sign they tacked on that said in red letters, if I recall it, "Eggs, handle carefully."

Q. What was your experience in the shipping of eggs at that time when those signs were used?

A. During that period of time, Mr. Matson, I was actively engaged in commercial work on the west coast with an organization that was shipping large quantities of carlots, and I can recall very distinctly that the railroads in those days were very fussy about even accepting a car before a railroad representative had examined it to determine it was properly loaded and properly braced.

If my recollection again serves me correctly, we had a very small percentage of breakage of eggs moving from the west coast to the east coast.

Q. By very small, could you give us a figure on that?

A. I am sorry, sir, that I can't, but I can answer that probably by saying it was negligible. It wasn't worth considering making claims for any breakage that may have been found.

Q. And those cars had the sign on the outside?

A. Yes, sir.

[fol. 260] Q. Do you think the sign had anything to do with the way the eggs were handled?

A. That, of course, I am not in a position to answer, Mr. Matson. I don't know. I would assume that the psychological——

Mr. Knowlton: Objection, Mr. Commissioner. He says he doesn't know, and then he would assume. I don't believe he should assume what he doesn't know.

Comm'r. Mitchell: I don't think this man is qualified to answer that.

Mr. Matson: I will withdraw the question.

By Mr. Matson:

Q. Have you inspected any cars of eggs within the last few months?

A. I have not personally, Mr. Matson. Our staff has.

Commr. Mitchell: Under your rules, if you were to inspect the car, you would permit cracked eggs in the car?

The Witness: Within the limits of the tolerance allowed for a particular grade, yes, sir.

Commr. Mitchell: Do you know that under the rule now in New York that if you examine 20 cases and they find a single egg cracked in the 20, they can check the whole car?

The Witness: I so understand.

Commr. Mitchell: What do you think about that rule? You are an expert on eggs.

The Witness: If you want my personal opinion——

Commr. Mitchell: That is what I want.

[fol. 261] The Witness: I think that it is a very impractical approach to the thing.

Commr. Mitchell: I am glad to hear you say so.

By Mr. Matson:

Q. Now going back to these definitions again, is there any substantial difference between storage packed eggs and rehandled and repacked eggs?

A. Yes, sir, very definitely.

Q. What is the distinction?

A. The storage packed egg is a much more closely selected commodity than the rehandled and repacked eggs.

Mr. Matson: That is all on direct, Mr. Commissioner.

Commr. Mitchell: You may cross examine.

Cross-examination.

By Mr. Knowlton:

Q. Did you ever take an egg and break it on your head?

A. I can't say that I have, sir.

Q. You have seen it done?

A. I have seen eggs thrown in electric fans, but never cracked on anybody's head.

Q. Don't you know you can break an egg on your head without hurting yourself?

A. Oh, yes.

Q. Why is that, yet you say you set up a 15 pound hammer blow?

A. It depends on how you hit that egg on your head. If you take that egg point up and let it come down on your [fol. 262] head and it won't feel as soft as when you lay it on your head and crack it. Try it some time.

Q. The point is that that 15 pounds is under a perfect condition you wouldn't have in a case, isn't that correct?

A. That is when the egg is perfectly centered, yes, sir.

Q. On this question of a new check being indiscernible and the check absorbing moisture, you didn't give us a time element or humidity element or temperature condition or time of the year. Do all those things affect that?

A. There are many variables in that, yes, sir.

Q. Those would be four of the variables?

A. I didn't hear that.

Q. Humidity, temperature, time of the year—those are three.

A. Of course. Let me say this, that the appearance of that apparent widening in the check is brought about by the absorption of moisture into the shell, not from the outside of the egg but from the inside.

Q. Would it be affected by the temperature?

A. Not likely to be, no, sir.

Q. How long does it take to become discernible?

A. Well, I don't believe that you can specify that particularly. I would say in three or four days you could detect it.

Q. Can you tell within one or two days as a rule?

A. It depends on the character of the shell.

Q. Normally you wouldn't be able to tell, would you? [fol. 263] A. I wouldn't answer that in a positive manner, sir, because as I say, it depends upon the nature of the shell.

Q. You pointed out it was humanly impossible, or at least impractical, to pack a perfect car. You have never seen a perfect car, have you?

A. No, sir, I haven't.

Q. Then there is a normal expectancy of shell damage in every car that is loaded, is there not?

A. Yes, sir.

Q. Have you ascertained recently what that figure would be at origin?

A. I don't have with me any particular figures on that point. We do have such information available in our certificates.

Q. Your certificates would show that?

A. Yes.

Q. Do you believe the certificates examined for the state of Iowa and Minnesota would be typical of what goes on throughout the country?

A. They would be typical of the eggs which we examine. I wouldn't say they are typical of all eggs because conditions are different in different areas.

Q. You are quite correct on that. They are typical, are they not, of the large egg producing territory in the central west?

A. I wouldn't even go so far as to say that, sir.

Q. Do you know of any way you could get a more typi-
[fol. 264] cal study than your own figures that you have made on thousands of cars?

A. You would have to assume that the examinations which we made on car lots of shell eggs were representative of all eggs packed over the United States, and I do not feel that we can make that assumption on the basis of the figures that we have available on the limited percentage of eggs which we examine.

Q. Have you any figures to show any better study?

A. I do not have any, no, sir.

Q. Have you ever made any in all the department's experience?

A. I think our particular shop, sir, does not have any authority to perform research. We simply perform a grading. Any research in regard to those matters is in somebody else's hands.

Q. Whose hands would they be in?

A. Well, at the present time there are a number of agencies in Washington handling research.

Q. Who would they be?

A. Well, they have a research division in the poultry branch.

Q. Are they presenting evidence here today?

A. I believe so.

Mr. Matson: Yes.

Mr. Knowlton: I don't want to ask questions of the wrong witness, but I assumed this man——

Commr. Mitchell: This man has said he doesn't have anything to do with it. That ought to be sufficient. He has [fol. 265] been very frank in his statement. He doesn't have that to do, and he doesn't do it, so I see no reason for pursuing it any further.

By Mr. Knowlton:

Q. Now, are there any other branches than the one you mentioned?

A. Are there any other branches?

Q. Research branches.

Commr. Mitchell: I think this is absolutely immaterial. Mr. Matson says he will furnish it. Why waste our time taking that up?

By Mr. Knowlton:

Q. At the time you made this study of eggs in the west, did they all move in wooden boxes?

A. We have made no studies; just grading.

Q. When you were a young boy?

A. I am still young.

Q. You were talking about some time ago, about the time of the labels?

A. We made no studies of it, sir. I was responsible and had charge of standardization work out there and also was responsible for the packing and loading.

Q. The point I am mak[illegible]g is that the shipments at that time moved in wooden boxes, didn't they?

A. Yes, they did.

Q. You wouldn't assume from that we should go back to the wooden boxes, would you?

A. I don't know that I can answer that question.

[fol. 266] Mr. Knowlton: That is all I have.

Commr. Mitchell: Is there further cross examination?

By Mr. Reilly:

Q. Mr. Hamann, you have testified that when you were moving eggs from the west coast, they came through,

with a certain amount of damage which you did not consider worthy of filing a claim. Could you give us any idea of what extent damage you would not file a claim for?

A. I can answer that question indirectly and say to you if a car of eggs was packed on the west coast to meet the requirements of a certain grade in New York City and it arrived in New York City within the limits of that grade as specified, either by the New York Mercantile Exchange or by the Department of Agriculture, that that car was acceptable merchandise.

Q. And you would not file a claim on such a car?

A. I wouldn't think so.

Mr. Reilly: Thank you, Mr. Hamann.

Commr. Mitchell: Is there further cross?

By Mr. Zearfaus:

Q. Mr. Hamann, you spoke about taking three hours to grade a carload of eggs. Does that take into consideration the time that the inspectors select the crates?

A. That includes the whole operation, from the time he moves into the job until he completes his grading memorandum setting forth his findings.

Q. Does he open the crate himself?

A. Generally we ask the applicant to open them for us, [fol. 267] but most of the time our graders do that job themselves, particularly if the eggs are in a car on team track.

Q. Does the inspector put the eggs back in the crate?

A. Yes, sir.

Q. Does he close the crate and tack it down?

A. Yes, sir.

Q. That is all included in the three hours.

A. Yes, sir.

By Mr. McDonald:

Q. Mr. Hamann, I am interested in your testimony with respect to the possibility of telling when eggs are checked. Your testimony, as I recall it, is to the effect that a new check is almost indiscernible in many instances. Will you elaborate on that a little bit, please? Tell us when

it is discernible, under what circumstances, and when it is not.

A. Of course, it depends, sir, on the nature of the break in the shell. If you have a checked egg, and let's understand clearly what we mean by a checked egg—one on which the shell is broken, but from which the contents are not exuding. Now, then, you can have a checked egg on the large side of the egg, which might be very readily discernible because your break is on a long curved surface, which you can observe much more readily than you can when the break is on a somewhat sharper curve and not so flat surface. So that your end check, we will call it for want of a better term, is probably more readily dis- [fol. 268] cernible than the check which is on the long or vertical axis of the egg.

Q. What about a check on the side?

A. That is the last one I mentioned.

Q. That is discernible?

A. That is less easy to detect.

Q. Could you tell that a check had occurred almost instantly?

A. If you are doing a proper job of grading and candling you can, yes, because in candling you hold two eggs in each hand, and you just automatically start to click the eggs together. If one of those eggs has a break in the shell, you get a dull sound as against a clear ring. It is just like a glass that has no break in it as against one that has.

Q. Do I understand you to say you do not indulge in candling normally in this type of operation?

A. No, I didn't say that.

Q. How about the clicking?

A. We do that as part of the operation.

Q. Is that true in every type of inspection you make?

A. Yes, sir. Everybody that candles eggs or knows anything about candling eggs does it just unconsciously. He is trained to do it.

Q. Do you indulge in candling, clicking, and so forth, in all types of your examination, or is that only in special types?

A. Well, that is in examinations where we examine for grade.

[fol. 269] Q. Not for an examination for damage, however?

A. Yes, an examination for damage you would pretty nearly have to do it if you were going to find out if there were any checks there or not.

Q. I am sorry, but I am not clear exactly as to when you do cover the whole spread field in this clicking and candling process and when you limit it to this mere examination?

A. I will try to explain to you when we do it and when we don't. When you are examining eggs for all factors, shell conditions, shell color, interior quality, we do this thing for want of a better term we will call belling the eggs, which determines whether or not the individual egg may have a break in it which you cannot otherwise observe. In that first operation, which we call grading, you just naturally do all those things.

Now, if you are simply looking at eggs without candling, they have already been graded and you want to find out whether the eggs have any breaks in them, there are two ways you can do it. One way, as I indicated, is to pull the filler up, which tells you whether there are any leakers, not whether there are any checks. If you want to find out if there are any checks, you have to pull the filler out and handle individual eggs, clicking them together that way to determine whether they are checks or sound eggs.

Q. Now, isn't a checked egg a potentially risky egg from a transportation standpoint?

[fol. 270] A. Well, obviously it would be because it isn't a sound shell.

Q. Is it possible to reasonably determine that fact without the detail type of inspection or examination that you referred to? In other words, merely by this raising of the filler and so forth?

A. No, sir, I wouldn't say it was possible.

Q. Would you say that anything more than that was a reasonable practice from the standpoint of transportation of a commodity like eggs, from the standpoint of inspecting them for transportation purposes?

The Witness: What was that question?

(The question was read by the reporter.)

The Witness: My answer to that question would be yes, I would consider it reasonable to go beyond that.

By Mr. McDonald:

Q. Will you tell me to what extent would you say it would be reasonable to go beyond that for inspection of eggs for transportation purposes?

A. If eggs are going to be properly transported and handled they should be properly graded and classified in the first place, it seems to me.

Commr. Mitchell: Let me understand you on that. Then you wouldn't believe you could haul eggs in from the country in a truck and load them on a car and send them to New York without grading them?

The Witness: Well, I will answer that question by saying [fol. 271] you could do it, but I wouldn't hazard a guess what the eggs would look like when they got there.

Mr. Knowlton: May I have the answer read?

Commr. Mitchell: He said you could do it, but he wouldn't hazard a guess as to how the eggs would look.

Mr. Matson: Those are current receipt eggs you are talking about?

The Witness: That is what I am talking about now.

Commr. Mitchell: Is there further cross examination?

Mr. McDonald: Yes.

By Mr. McDonald:

Q. Mr. Hamann, is it reasonably possible for anyone to determine whether or not in the average case a check has occurred, say, within six to fourteen hours?

A. I am going to have to answer that by saying it depends entirely upon the nature of the egg that you are dealing with.

Q. And if the check was in the ideal position from the standpoint of determining a check on the egg, then the answer would be yes, but otherwise it would be no, would that be true?

A. What do you mean by the ideal position?

Q. I understood if the check occurred on the top of the egg, it made it more easy to discern?

A. When you put it that way, it is different. There is no ideal position for a check, in my opinion. The ideal position is not to have any checks.

Q. Excuse me. The ideal position to discern a check, [fol. 272] let's put it that way, the ideal part of the egg in which to discern a check. You spoke of graded eggs, and I think that was your own definition, was it?

A. That is the definition which we usually apply in the department of Agriculture.

Q. Not necessarily a trade definition?

A. I think it is generally a trade definition, yes, sir.

Q. As I understand it, you spoke of this clicking method of examining eggs as a fairly effective one for determining checks, and so forth?

A. I think it is.

Q. I understood you to comment on the possibility of clicking eggs on New York piers, for example, depending upon the noise. Would I correctly infer from your testimony in that respect that inspections made by your department, for example, or anybody else who wanted to make them, require relatively ideal conditions and are not practical in a place like New York City pier, which is certainly not a soundproof place?

A. Let me answer that question by telling you that we have never felt that the New York piers or anything like that were places where any kind of an examination for shell eggs should be made.

Q. Under what circumstances, generally, do you perform that type of examination?

A. Any kind of examination which you perform on eggs [fol. 273] should be performed in rooms which are properly equipped to do the job in an efficient and effective manner.

Q. Now, is that saying in effect then that for a railroad inspector either at point of origin or at point of destination, in order to do the job effectively from your standpoint, would of necessity have to transport those eggs from the car to a room of the kind you just described to make the examination there?

A. He certainly should. I might add to that, sir, that I have felt that the inspections which we make here in Chicago on team track are in no sense the kind of inspection we would like to make because we don't feel that you can even do an adequate job inside of a car. I think the railroads here in Chicago should make provisions for adequate handling.

Commr. Mitchell: You have to meet the situation that you have though, don't you?

The Witness: Oh, yes. We have to meet the situation that we have.

Commr. Mitchell: You don't have to have the ideal situation.

The Witness: Yes. I was just expressing an opinion here, that is all.

By Mr. McDonald:

Q. You spoke of the cost of the examinations, and in the case of lots ranging approximately from four to six hundred packages or cases, that cost would be $15, and [fol. 274] $1.50 for each additional 100. You spoke of $3 extra where that was done on a team track because of your additional cost.

I wonder if you would mind telling us for the record just what additional costs you are referring to?

A. The additional costs in the additional personnel. We never expect one man to go on a team track and examine a car of eggs because generally after the car has been in transit, there is a tendency for the cases to tie themselves together more closely, and it is almost impossible in some cases for one man to get in there and pull a sample without breaking his back, so we need more personnel to do the job.

Q. From your standpoint, would it be satisfactory to allow one man to do a job of that kind on a pier?

A. Oh, yes, on a pier, where the eggs have been unloaded from the car.

Q. Would you think that your inspection on a pier, despite the relatively unsatisfactory conditions that you have testified to, would be reasonably reliable?

A. I would say yes. When I say that, I keep my fingers crossed.

Q. You wouldn't feel anything like as assured about that as you would one made under your own conditions, would you?

A. No, I wouldn't.

Commr. Mitchell: Is there further cross examination?

Mr. McDonald: Yes, sir.

[fol. 275] Commr. Mitchell: Let's proceed, then.

By Mr. McDonald:

Q. You have defined rehandled and repacked eggs. Do you recall that?

A. Yes, sir.

Q. Doesn't rehandling and repacking from your standpoint presuppose a prior packing and handling? Isn't that unquestionably true?

A. It all depends on what you call prior packing or handling.

Q. Doesn't that mean eggs have been, to use your own definition, your own words, processed in some fashion or other previously, as distinguished from the current receipts type?

A. Yes, yes. When you mention it that way, I would say yes.

Q. Now, your storage pack. Likewise you spoke of those being placed in new packages and containers and doesn't that also mean that they in the same fashion have had a prior handling in packing or processing as distinguished, at least, from your current receipt type?

A. No, I don't think so, because your storage packed egg—I say, I don't think so. I would say no, I wouldn't.

Q. I only want to get the record clear so we are all distinctly at the time that they would be put into new sure of what the understanding is there, and you said packages and containers?

A. That is correct.

Q. Doesn't that mean that they were packed previously?

A. No, they may have come in from the producer.

[fol. 276] Commr. Mitchell: Let's proceed, gentlemen. We are taking altogether too much time.

By Mr. McDonald:

Q. You spoke in response to a question that Commissioner Mitchell asked you with respect to the right of consignees in New York to file claims if they found one broken egg as being a very impractical approach. Would you mind telling us from your standpoint what a practical approach would be in a case of that kind?

Mr. Matson: Objection. The witness has not been qualified to talk on that subject.

Mr. McDonald: I don't think I have to answer that one.

Commr. Mitchell: I think this gentleman is perfectly qualified to answer that question. They do provide certain tolerances in their regular grading. You may answer.

The Witness: May I have the question read?

(The question was read by the reporter.)

The Witness: I would say a practical approach to that would be to recognize that the industry and the Department of Agriculture have established grades for various classifications of eggs which have been recognized over a period of many years as meeting the practical requirements of the industry, and therefore in my opinion it would seem that those grades should be applied when the determination is made as to whether or not the condition as found in a car of shell eggs is of a certain character.

[fol. 277] By Mr. McDonald:

Q. What would you say, in your opinion, would be a reasonable tolerance?

A. I can best answer that, sir, by referring you back to Exhibit No. 20, which establishes minimum tolerances for wholesale grades of shell eggs below which we feel eggs have a stated quality should not go in order to go into that particular category.

Q. Could you tell me what that would mean in terms of normal expectancy of shell damage?

A. Of course, if you look at our tolerances which are permitted, we don't specify, except in a very general manner, the tolerances which are permitted. We include all of these various things, and they may be in varying proportions.

Q. Well, that is one reason from our standpoint that we feel we have to reduce it to shell damage. Can you as an expert in the field give me any idea of what you would consider a reasonable overall shell damage tolerance?

A. I don't believe I could, sir.

Commr. Mitchell: Do you believe there should be a tolerance placed on shell eggs shipped into New York?

The Witness: Yes, sir, I believe that very definitely.

By Mr. McDonald:

Q. Would you say it should be 20 per cent?

Commr. Mitchell: He said he couldn't tell you that. I don't see any sense in going any further into that.

Exam. Mullen: In making that answer, were you refer-
[fol. 278] ring to a tolerance for damaged eggs, shell broken eggs?

The Witness: I am referring to tolerances of all eggs below the quality of the stated grade.

Exam. Mullen: I notice that in your grades here, shell broken.

The Witness: We don't specifically state that, although we consider a broken egg as loss, and that is covered in our percentages at the right hand side of that chart where you notice the per cent increasing.

Exam. Mullen: You classify that as a loss?

The Witness: Yes, sir.

Exam. Mullen: And you permit a certain tolerance in that respect also?

The Witness: In other words, you could have a leaking egg in there, and if the total percentage of eggs of a loss character did not exceed that minimum, then that lot of eggs would still fall within that grade.

By Mr. McDonald:

Q. As I understand it, the department of Agriculture's own specifications with respect to shell damage provide, for example, a tolerance of 5 per cent, I guess it is, on grade AA; leakers, ½ per cent; checks sustained, 4½ per cent. Would you say that was a minimum tolerance expectancy?

A. All tolerances which we set forth are minimums below which we do not expect eggs to go if they are to be classified in any particular stated quality category. These tolerances [fol. 279] which we have set up as minimums, as I have previously indicated, have been arrived at after excessive discussions with the industry and all other interested parties.

Mr. McDonald: That is all. Thank you.

By Mr. Blanchard:

Q. When you say you establish these tolerances as minimums, you mean when you have a tolerance of ½ per cent leakers for class A eggs, that the car cannot have less than ½ per cent and still be class AA eggs?

A. Oh, yes, they can have less.

Q. Then it is not a minimum as far as breakage?

A. Oh, yes, it is a minimum to the extent we don't permit any more than that.

Q. Then it is a maximum as far as leakers are concerned and minimum as far as good eggs are concerned?

A. That is probably a matter of interpretation of minimum and maximum. We don't set an upper limit as to the actual number of good eggs that could be in the car.

Commr. Mitchell: What you mean if it has more than this percentage, they are not graded AA eggs.

The Witness: Yes, that is correct.

By Mr. Blanchard:

Q. So it is really a maximum?

Commr. Mitchell: Let's not argue about that. Proceed with the case.

By Mr. Blanchard:

Q. A maximum permitted quantity of leaker eggs?

[fol. 280] A. If you want to put it that way.

Commr. Mitchell: It is very definitely in the record, Mr. Blanchard, what this man means. I see no sense in wasting the time of all these people. Bring out something material. Let's not waste time on minimum and maximum.

By Mr. Blanchard:

Q. I don't know whether it is material, but counsel for the carriers brought out the question that there should be tolerances in shipment of eggs to New York. Your presiding Examiner went into that subject. I don't think he went into it as far as a person who knows the egg business——

Commr. Mitchell: All we are going to try to do is have it material to the issues presented here.

By Mr. Blanchard:

Q. Now, you testified in answer to cross examination that there should be by all means tolerances in connection with movement of eggs to New York. Did you or did you not refer to the tolerances such as shown on your Exhibit 19?

A. I referred to those tolerances, sir, or any other tolerances that may be established by recognized trading agencies.

Q. Now, you have on grade AA a tolerance of 15 or 20 per cent, if I understand your exhibit correctly?

A. What grade are you talking about, wholesale?

Q. AA, page 2 of your Exhibit 21. You show as to class grade AA first a tolerance permitted of 15 to 20 per cent. That is 15 to 20 per cent may be what?

[fol. 281] A. Of eggs below AA quality. I would like to point out to you, however, that you are talking about consumer grades now.

Commr. Mitchell: Is this material, Mr. Blanchard, to what we have got here? This man testified that he thought there should be a tolerance of damaged eggs into New York. He was not able to state the amount. Now, what has this got to do with it?

By Mr. Blanchard:

Q. Over and above the ½ to one per cent for leakers, do you recognize any tolerance for damaged eggs in the Department of Agriculture regulations?

A. Well, I can only answer that question by asking you another question. What do you mean by damage other than leakers?

Q. Broken?

A. Well, isn't that a leaker?

Q. Do you include broken eggs as leakers?

A. Sure, they are loss.

Q. So when you say one-half per cent leakers permitted in grade AA, A, B and one per cent in C, you mean the maximum amount of leakers and breaks permitted under those grades are one-half per cent and one per cent respectively?

A. That is in connection with consumer grades. Let's get that clear.

Q. Where are your wholesale grades?

A. They are set forth in Exhibit No. 20.

Q. Now, what per centage of broken or leaker eggs do you [fol. 282] permit to exist without affecting the grading of the egg?

A. Wholesale grade, we set up all tolerances in a combined figure. On eggs other than what we designate as loss, over in the right hand side of that column, you notice we designate a percentage for loss and all loss including leakers may not exceed 1.7 per cent. But if the eggs are to be classified as AA quality, if that be classified, or if they are classified as C quality, you may have as much as 5 per cent under the caption of loss including leakage.

Q. That is, if they are class C or lowest grade?

A. Yes. You notice the quality of the egg gets poorer there. Our percentage of losses increase.

Q. So that is the maximum permitted for eggs, actually broken or partially broken?

A. Yes.

Mr. Blanchard: That is all.

The Witness: Or any other kind of loss.

Commr. Mitchell: Is there further cross examination?
Mr. Matson: I have a few questions on redirect.

Redirect examination.

By Mr. Matson:

Q. Can you detect a blind check by clicking?
A. No, sir.
Q. It has to be detected by candling if it is going to be detected?
A. Yes, sir.

[fol. 283] Mr. Matson: Thank you. That is all.
Commr. Mitchell: Thank you, Mr. Hamann. That is all.

(Witness excused.)

Commr. Mitchell: Call your next witness.

HERMON I. MILLER was sworn and testified as follows:

Direct examination.

By Mr. Matson:

Q. Will you give your name and address?
A. Hermon I. Miller. I am chief of the Research Division of the Poultry Branch, Production and Marketing Administration, United States Department of Agriculture, Washington, D. C.

My early training consisted of studies at the University of Nebraska which resulted in a bachelor of science degree in 1930 and a master's degree in agricultural economics in 1936. Since then I have spent a year at Cornell University majoring in marketing, farm management and prices, with reference to a doctor's degree.

Before entering Cornell University I was employed by the State Agricultural Extension Service in Nebraska, and following my training at Cornell I was employed by the Vermont State Agricultural Extension Service. I left there to go to New Jersey as a representative of the Bureau

of Agricultural Economics of the United States Department of Agriculture, and in 1942 came to Washington to work for the Federal Extension Service as marketing specialist for poultry and dairy products.

[fol. 284] I transferred to the poultry branch in may 1946, and when funds became available under the Research and Marketing Act of 1946, was assigned the responsibility for developing research activities for that agency.

There are a great number of things which are not known about the marketing of poultry and poultry products. The marketers are familiar, of course, with circumstances surrounding their own operations. However, little is known of problems, en masse, for the poultry industry. For this reason, one of the first jobs that we have undertaken in the Research Division of the Poultry Branch is to measure the incidence of, and the importance of, various problems surrounding the marketing of poultry and eggs.

Eggs are highly perishable and are fragile. There has been much talk concerning the decline in quality in eggs and damage to eggs which occur between the farm and the consumer. Little information of a factual nature has been assembled which indicates the importance of the quality and breakage problem while eggs move through the marketing channels. Two studies which we have undertaken cooperatively with appropriate agencies will define quality decline and damage to eggs as they move from producer to wholesaler. It is the facts from these two studies that I will use in my presentation.

I want it understood that I have no opinions to express. I hope the facts which we have assembled will stand your [fol. 285] careful scrutiny as we think we have followed correct statistical procedures. We hope that the facts presented will help you to arrive at an equitable decision concerning the problem at hand.

I have several exhibits.

Mr. Matson: Mr. Commissioner, at this point may we have identified as Exhibits the first three pages in this collection as the first exhibit?

Commr. Mitchell: That will be Exhibit 22, Mr. Matson.

(Dept. of Agri. Exhibit No. 22, Witness Miller, marked for identification.)

Mr. Matson: And the following eight pages, which starts with the page captioned at the top, Summary, as the second exhibit. That is the remainder of the material.

Commr. Mitchell: That will be Exhibit 23.

(Dept. of Agri. Exhibit No. 23, Witness Miller, marked for identification.)

The Witness: The first exhibit, Exhibit 22, consists of a summary of grading reports for 2,212 cars of eggs loaded in Midwestern States in 1942, 1943, and 1948. Information from several sources is summarized in this exhibit. First, we have approximately 2,400 carloads of eggs packed for shipment during 1942 and 1943. These statistics were secured from the Army Quartermaster Corps.

The second source of information is a random sampling of the grading reports for cars inspected by the Federal [fol. 286] Grading and Inspection Service in 1948. We took from this source a 5 per cent sample to represent each month and each state in which the shipments originated.

We were told by the statistical experts that that was sufficient.

By Mr. Matson:

Q. Did you follow the regular grading procedure outlined by the previous witness, Mr. Hamann?

A. That is right.

The third source of material consists of data on 115 cars secured by our own staff members in 1948 and 1949. In these records we made careful inspections of eggs at points of origin as they were to be loaded into railway cars, marked the sample cases inspected at this point, and reinspected these same cases and the same eggs at destination. This exhibit should typify the average quality and condition of eggs that are packed in railroad cars for shipment from midwestern points.

The second part of this exhibit consists of a summary of grading reports for 2513 cars of eggs at destination. This exhibit should typify the average quality and condition of egg cars as they arrive at destination points. The destination points are scattered throughout the Eastern Seaboard,

the Western Seaboard and the Gulfport cities. Contained in this summary are records secured from the Quartermaster Corps and data on the cars on which we made inspection at both ends of their journey.

[fol. 287] The third section of that page, which you may have written 22 on, I put there to save you the trouble of trying to calculate the differences. I personally don't place too much faith in the difference between those two figures. I think I am correct in saying that the top part of that table typifies to a considerable extent at least what goes into cars at origin and the second section what comes out. I would rather refer to a table which follows with regard to the difference.

The third section of the exhibit consists of a summary of the difference between the quality and condition reported at origin and at destination in the cars on which we made inspections both at origin and at destination on the same cases of eggs. This difference, we feel, gives some indication of the degree of damage during the trip which these eggs took.

That would be the third table over. We have listed on that page origin for the 115 cars broken down by four seasons, destination. That is the same eggs and same cars, looked at to a considerable extent by the same inspector at both ends, and the difference. I think that difference is quite representative of what occurs during transport.

Now, I have more faith in those figures than I would have otherwise because if you look in the middle page between those two tables you find the report on the 737 cars selected at random from the inspection and grading reports, and I think you will agree that to a considerable extent the total or average column for origin and [fol. 288] grading reported on this page agree with the origin grading for the 115 cars. That gives me confidence to a certain extent that the figures on the 115 cars are rather representative.

By Mr. Matson:

Q. Now, will you proceed with your explanation of Exhibit No. 23?

A. A fourth source of information of which you may want to avail yourselves when it becomes available, consists of the study of egg quality and changes in egg quality between producers and car lot assemblers in the thirteen north central states. I have with me a copy of the manuscript which is now at the printers, and which will become available for general distribution about August 15. I cannot give you copies of this publication today, but will be glad to furnish them to you when they are available. I have included with the exhibits Exhibit 23, several pages from the manuscript. This information may be of interest to you because it presents the condition of eggs as they are delivered by producers on the basis of two different methods of purchase, i.e., a graded buying program versus a current receipt buying program. Another study of egg quality similar to the north central study, is being completed in the northeastern states. These two studies, I think, will show rather clearly that approximately 4 per cent of the eggs as delivered by producers and sold to the first buyers are in checked condition and that an additional one per cent [fol. 289] were checked while traveling from the first buyer to the second buyer. This would mean that when midwestern eggs arrive at the car lot assembler's plant in midwestern states, or reach wholesalers in the northeast, approximately 5 per cent of them would be checked.

It is perhaps unnecessary for me to take more of your time to review the facts contained in our two or three studies. If there are any questions concerning the procedures which we used to secure our information, or details concerning the facts, I would be glad to explain them to you. However, I wish to emphasize again that I do not express opinions regarding rules under investigation, but I sincerely hope that the facts which we have for you will assist you in arriving at an equitable decision regarding the problem which you have before me today.

Commr. Mitchell: Why don't you express an opinion regarding rules here under consideration?

The Witness: I just prefer not to.

Commr. Mitchell: We must have the best evidence available. You have made the study; you have a standing.

You are in a better position to express it, aren't you, than someone else?

The Witness: I would rather, Mr. Commissioner, have the facts stand on their own.

Commr. Mitchell: We have to draw conclusions from those facts.

Mr. Matson: We will try to assist the Commissioner in [fol. 290] our brief on that, Mr. Commissioner.

Commr. Mitchell: All right.

By Mr. Matson:

Q. Mr. Miller, will you refer to the next to the last page in Exhibit 23, the table at the bottom of that page, which is captioned Table 14, shows that when eggs moved from a country buying station to a central assembly plant, you have found a quality change in shell damage of certain amounts, ranging from 2.2 to 4.0. Do those represent percentage points or what are they?

A. No, Mr. Matson. In this report you are referring to, we measure the change in quality by taking the difference in the number of eggs, the difference in the number of checks, and so on. That is reported on the preceding page as numbers of eggs or per cents.

Now, to develop a correlation between a certain marketing process and change in quality, we developed what we call a system of points of change. That means, briefly, that a factor of 12 or points of change of 12 would mean that 12 eggs dropped one grade out of every 100 or that three eggs dropped four grades.

Now, the checks were down the line about four, A, B, C quality or grade, and then checks in the classifications that we used, and the incidence of A's was 66.7 per cent as shown in another table in this report. So we gave a weighting to that, and this is merely an indication of the [fol. 291] importance of a number of checks using that change instead of percentage figures.

It is pointed out clearly that the number of checks increased .7 in the spring and .6 in the fall.

Q. That is on table 10 on the preceding page?

A. That is right. This system was merely set up as a way to correlate between the marketing practices and

changes in quality. It is a statistical procedure that we used.

Q. Now, all of this transportation that you have referred to here in Exhibit 23 took place prior to the rail movement?

A. That is right.

Q. I note on Exhibit 22 that there is quite a drop in egg quality as a result of rail transportation. The table at the bottom of the first page of the exhibit indicates a drop in the number of grade A eggs of 18.8 per cent, and a corresponding increase in the number of grade B eggs, 18.3 per cent. Is that regarded as damage to eggs or is that just one of the things that is expected to happen to eggs when they are shipped to market?

A. Well, it is expected to happen. Of course, the purpose of icing and all the other things that are done are to protect that from happening to the extent that it can be protected.

Q. Do you know whether claims are filed with the railroads to seek compensation for such decreased quality?

A. As far as I know no claims are filed for that purpose, [fol. 292] but I could be wrong.

Mr. Matson: That is all on direct.

Commr. Mitchell: Do the grade changes from A to B due to temperature changes or what causes that?

The Witness: It could be temperature, humidity, the mere matter of time.

Commr. Mitchell: Now, the only difference, the main difference between grading an egg, an A egg and a grade B egg is the amount of air that is in it, isn't it?

The Witness: Size of air cell, the viscosity.

Commr. Mitchell: Does that increase?

The Witness: It could increase if humidity and temperature conditions—in fact, it does increase very fast in size.

Commr. Mitchell: Is there any cross examination?

Cross-examination.

By Mr. Zearfaus:

Q. Mr. Miller, I notice that on page two of your prepared statement, you say first we have approximately

2400 carloads of eggs packed for shipment during 1942 and 1943. These statistics were secured from the Army Quartermaster Corps. I presume you are talking about the first two studies on page 21 of your exhibit?

A. That is right. They are included in the 1232 cars.

Q. Now, 1942 and 1943 were war years. Do you know to what destinations those shipments were sent?

A. Well, those went to all points. I mean, they went east, west, south, and so on.

[fol. 293] Q. Probably went to army camps?

A. That is right.

Q. Do you know what type of inspection was made at destination in connection with those shipments?

A. They were made, as I understand it, by the veterinary corps.

Q. Do you know what kind of investigation was made?

A. I don't know the exact type, no, except they had these same types of report with regard to inferior quality and conditions as furnished by Mr. Hamann's group. In other words, it was interior quality as well as condition of shell.

Q. Do you think as careful an investigation was made at those places as at other places?

A. I think the veterinary corps would say it was. They could testify to that.

Mr. Zearfaus: Are they going to testify, Mr. Matson?

Mr. Krebill: Yes, I can say that they will.

The Witness: I might state, if I have that privilege, that the purpose of drawing together that group of cars which are available to us was merely to test our own shipments of 115 cars. If you are familiar with statistical procedure, if you can get two independent studies that will stand together, I mean show exactly the same results, you can have a lot of confidence in what you find. If they don't show somewhat the same results, you can't have too much confidence in what you find.

[fol. 294] By Mr. Zearfaus:

Q. Wouldn't you have to take into consideration the two studies were conducted in different years, one in 1942 and '43, and the other in 1948, and that would be a material factor, wouldn't it?

A. That is right. Now we have some other material for 1948 that we haven't got summarized yet that we will throw into this when we get it completed.

Mr. Zearfaus: Is the witness going to read this Exhibit 23? There are eight pages of typewritten material.

Commr. Mitchell: No, he is going to introduce it. The figures are there. There is no sense reading it into the record.

Mr. Zearfaus: We ought to have an opportunity to read it, don't you think so?

Commr. Mitchell: Will Mr. Miller be available this afternoon? He will be available in New York.

Mr. Matson: We had not discussed that, Your Honor.

Commr. Mitchell: When are you leaving, Mr. Miller?

The Witness: The four o'clock plane.

Commr. Mitchell: If you are through with him, we will excuse him, and the gentlemen can look it over and recall him.

Mr. Matson: I am offering Exhibits 22 and 23 in evidence, Your Honor.

Commr. Mitchell: Is there objection to Exhibits 22 and 23?

Mr. Zearfaus: We will object to Exhibit 23 until we have [fol. 295] had an opportunity to examine it.

Commr. Mitchell: They may be admitted. They were prepared by the Department of Agriculture.

Mr. Matson: I might say for the record that this data is data requested by the Interstate Commerce Commission pursuant to Section 201 of the Agriculture Marketing Act of 1938, and we are cooperating with the Commission to that extent. That is the status of this material.

Mr. Zearfaus: Our only point is that we haven't had a chance to read it.

Commr. Mitchell: You can look it over, and we will hold Mr. Miller here until afterwards. I think he has explained it very carefully.

Mr. Matson: As explained by Mr. Miller, the data contained in Exhibit 23 will be published in August. It is in the hands of the printer now, and we will endeavor to serve copies on all parties.

Commr. Mitchell: I will admit Exhibits 22 and 23 subject to a motion to strike if there is any good reason for striking. I see no reason to hold it up at this time.

Mr. Matson: Thank you.

(Dept. of Agri. Exhibits Nos. 22 and 23, Witness Miller, received in evidence.)

Mr. Knowlton: May I cross examine?

Commr. Mitchell: Yes, if you are ready to proceed. We [fol. 296] have five lawyers examining these witnesses, and there is a serious question in my mind if that is proper procedure. Go ahead.

Cross-examination.

By Mr. Knowlton:

Q. Mr. Miller, your attorney raised a question about our studies not covering the south. I notice your studies do not cover the south. Don't you believe that your studies are typical of the great egg production of this country?

A. The 700 and some cars cover all parts of the country.

Q. Don't you believe your other study would be typical?

A. We hope it is.

Q. The midwestern study?

A. I want to run a test or two on that before I say yes it is.

Q. But you believe it enough so that you conducted your study on that basis?

A. That is right.

Q. Could you summarize your studies for the benefit of the Commission so as to give one figure of a normal expectancy of shell damage at origin?

A. I would say that on the basis of our—I would like to refer to shell damage as the number of checks. That is the only way we have of being definite about what we are talking about.

Q. Stains come in there? That is a shell damage.

A. Yes, it is a condition of shell.

Q. That is what I want to include.

A. We show 1.9 per cent checks at origin. I think that

[fol. 297] is a pretty good typical figure. We show 1.4 per cent stains and dirties. I don't have as much confidence in that. I would like to check that before I am too sure about it.

On the two tables, stains and dirties shown on the 737 cars is 1.8; ours is 1.4. There is an opportunity for some difference in interpretation of stains.

Q. I am asking my question the same way as Commissioner Mitchell would ask you, can you summarize it up to one figure? Give us the best figure that you, in your own judgment, would have.

Commr. Mitchell: Well, he has answered that, as I understand it. He said 1.9 for checks, which he thinks is a good figure, and 1.4 for stains, but he wants to recheck that before he establishes the 11.4.

The Witness: That would be my answer.

By Mr. Knowlton:

Q. Then the total of those two is 3. of loss?

A. 3.4 normal expectancy. That is what these records show.

Mr. Knowlton: That is all. Thank you.

By Mr. Blanchard:

Q. 3.1 would include all damage, moving from the farm to the packer and from the packer by rail?

A. No, we have two studies here. One is from the farm to the packer. That shows approximately 5 per cent checks, approximately 12 per cent stains and dirties. Those eggs are reworked to a large extent and repacked. When they leave the shipping plant they show 1.9 per cent checks and 1.4 stains and dirties.

[fol. 298] Q. The 3. something figure you gave is the weighted average of the 5 per cent into the packing plant?

A. No, it is what actually leaves the packing plant, what goes into the cars according to the 115 records we have.

Q. The sum of those plus dirties and stains, yes.

The Witness: With reference to that question of the south, I don't know where south begins in your termin-

ology. The only records we have in the 115 is from Missouri.

Mr. Knowlton: That is the point I wanted to bring out because I didn't think we were in real controversy.

Commr. Mitchell: Are there any further questions? That is all. Thank you, Dr. Miller.

(Witness excused.)

Mr. Morken: If there is no other witness, I have a statement.

Commr. Mitchell: Is that all your witnesses, Mr. Matson?

Mr. Matson: Yes, at this time.

Mr. Krebill: We have several witnesses.

Commr. Mitchell: You represent the army?

Mr. Krebill: The army and the air force.

Commr. Mitchell: Do you want to make your statement now, Mr. Morken?

Mr. Morken: I would like to.

Donald Morken was sworn and testified as follows:

[fol. 299] The Witness: My name is Donald Morken. I am counsel for and secretary of the Midwest Dairy Despatch, Inc.

I have here a prepared statement that was to be read by Mr. S. F. Roberts, the president of the applicant. He is in New York. Why he is not here, I don't know. I have discussed the matter with Mr. Knowlton, and with one or two minor changes that will be made on the statement, I would like to read the statement for Mr. Roberts and present the exhibit. I think it will expedite my testimony.

Commr. Mitchell: Are you familiar with the statements contained in the statement that Mr. Roberts was going to make?

The Witness: I think so. I was in all its preparation.

Commr. Mitchell: Is there objection?

Mr. Knowlton: I would like to see it first, if I may, please.

Commr. Mitchell: Now, do I understand, Mr. Morken, that you are reading this as your testimony or that you say this is what Mr. Roberts would testify if he were here?

The Witness: It is what he would testify if he were here. I think I am generally familiar with the material that is contained therein, and I think I can reply to any cross examination. If I can't, I will say so, and be willing to have that subject to objection if my foundation isn't proper on it. I would prefer to read the statement for Mr. Roberts.

Commr. Mitchell: You may proceed subject to the right [fol. 300] to object. This is a little out of order, but we will permit it, and if there is cross examination, then of course offhand I think we would have to strike that part out because Mr. Roberts isn't here to be cross examined. You can only testify as to what you know. I hear no objection on the part of any person here. Go ahead, Mr. Morken.

The Witness: All right. I might say I am going to change one word on page 5 and leave off a sentence on page 6 of the exhibit that I will mention as I come to it.

Commr. Mitchell: Do you want to say you are reading this, so the record will show it?

The Witness: I am reading this now:

"My name is S. F. Roberts. I am president of the Midwest Dairy Despatch, Inc., a dairy forwarder, holding a permit issued by the Interstate Commerce Commission, Docket F. F. 196. This permit authorizes operations between the states of Minnesota, North Dakota and South Dakota on the one hand, and on the other, the states of Connecticut, Delaware, Maryland, Massachusetts, New Jersey, Rhode Island, Pennsylvania and New York. I have been president of the Midwest Dairy Despatch since June 1, 1949, when this corporation took over my operations as an individual. Prior to my purchase of these rights in 1945 I had been employed by the former owner since 1941. I had approximately six years' experience prior to that time handling dairy products.

[fol. 301] I have been in New York, where I have an agent, E. W. Morchee & Company, and throughout Min-

nesota, North and South Dakota, calling on my customers. I think I am quite familiar with the general marketing of eggs.

The Midwest Dairy Despatch, Inc. is a true, independent forwarder. It operates no trucks, has no stock or financial interest in any trucking company, has no interest in any produce company, and does not buy or sell eggs which it places in transit. Its sole business is accepting shipments from producers or marketers, which shipments are generally received via common carriers, inspecting rehandling and loading them into rail refrigerator cars or refrigerated trucks for reshipment to agents in the east for distribution to the ultimate consignee. During 1947 we shipped a total of 732 rail cars from Minneapolis to eastern destinations. We did not ship a single truck load shipment. During 1948 we shipped approximately 420 rail cars and 100 truck loads of eggs to New York. Some were straight cars of eggs, and some shipments were mixed butter and eggs. The eggs we forward are almost exclusively Minnesota eggs. Our egg shippers in Minnesota number approximately 200, and vary from commercial producers to produce stations, to individual farmers. The individual accounts are scattered throughout southwest, west and northwest Minnesota.

A typical transaction in our normal business is as fol- [fol. 302] lows. In Osakis, Minnesota, 124 miles northwest of Minneapolis, is the Herberger-Cruse General Store. Herberger-Cruse ship between 400 and 500 cases of eggs per week to eastern points in less than carload lots. Generally speaking, it never keeps an egg in its store over 48 hours because three times a week it sends these shipments either by their own truck or a common carrier motor truck line to Minneapolis. The highway between Osakis and Minneapolis is a concrete, all weather highway. The eggs are turned over to us the same day they leave Osakis and immediately put into a refrigerated car or refrigerated truck. The cases of eggs are inspected as they are unloaded, and any cases containing damaged eggs are refused. The rail cars are in New York on the 5th or 6th morning, and the trucks arrive the 4th morning. This service means that the Herberger-Cruse store in Osakis, Minnesota, has its eggs in the New York market

in less than one week. We are giving the same service to all of our shippers. We receive approximately 200 of these LCL shipments per week that vary in size from 5 to 400 cases.

It makes no difference to us if these eggs come to Minneapolis via private carrier or common carrier. We make the same inspection and refuse to accept all cases containing damaged eggs. Damage does not occur very frequently. My best estimate is that in normal times we refuse 5 or 6 cases a week out of 3000 cases received. All shipments are consolidated and forwarded in Minneapolis, Minnesota.

[fol. 303] If country egg shippers did not have the service of a forwarder such as Midwest, it would be necessary for them to consolidate carloads of their own product. It would take them a week or ten days to accumulate enough eggs to fill a car, and another week or ten days for this car to travel from a point like Osakis to New York City. This would mean that the consumers in New York would be getting eggs at least two weeks old.

The Midwest Dairy Despatch is strongly opposed to the present rules and regulations maintained by the railroad on eggs, and in particular, the regulation which says that all eggs must be rehandled and repacked at point of rail origin, or they must be shipped as "current receipts" subject to an arbitrary damage allowance of 5 per cent.

We are opposed to this rule and regulation for many reasons. In the first place Midwest Dairy Despatch does not own the eggs it forwards and ships, and can not rehandle and repack them in Minneapolis even if it wanted to. If its customers had to rehandle and repack them at point of rail origin, it would be necessary to have several employees, a large room with tables, storage space for new cartons etc. The obvious expense, delay and unnecessary handling make such an operation completely impractical.

Midwest Dairy Despatch participated in a hearing before the Consolidated Freight Classification Board when these [fol. 304] proposed rules and regulations were discussed. At that time that the rails were claiming the damage to eggs occurred in great part, if not all, before the railroads received the eggs from the shipper. In other words, the

common carriers or private carriers were damaging these eggs while hauling them 100 or 200 miles over a smooth highway, rather than the railroad damaging them between Minneapolis and New York, a haul of approximately 1300 miles. I have prepared an exhibit which I ask to be marked for identification at this time."

Commr. Mitchell: It will be marked as Exhibit No. 24.

(Midwest Dairy Exhibit No. 24, Witness Roberts (By Donald Morken), marked for identification.)

The Witness: "This exhibit is a comparison of the claims we have experienced on our shipments, both truck and rail for certain months in 1947, 1948 and 1949. I call your attention to the fact that during 1947, almost every car had a claim filed against it, and the average claim was better than $200. In 1948, the situation improved in that only half of the cars had claims filed against them, and during March the claims averaged only $42 per car. During this time we did not change our method of operation. The cars were loaded and braced in the same manner. When the rules and regulations with regard to rehandling and repacking at point of rail origin became effective July 24, 1948, we were forced to make all our egg shipments by truck. The [fol. 305] last set of figures on the bottom of the exhibit show our average claim per truck shipment. These truck shipments moved better than 1300 miles. The movement was new to the truckers, and in August and September the claims were about $10 per trailer. From October 1948, through January 1949, the claims against truck shipments all but disappeared. They averaged $1.32 per truckload, or less than three tenths of cent per case. These figures were taken from our books and records and I have with me the information that goes to make up this exhibit. I can give the rail car number, the arrival date, and the exact claim for each car in all the months shown on this exhibit. I now ask that this exhibit be received in evidence."

Commr. Mitchell: Is there objection?

Mr. McDonald: I suggest, if I may, that it be held until we complete the entire statement.

Commr. Mitchell: We will reserve ruling until the statement is finished.

The Witness: "It is my conclusion, and probably a rather obvious one, that there are so few small claims on eggs shipped by truck for better than 1300 miles that the railroad's claim eggs are damaged during the short haul of 60 to 200 miles to rail origin point is untenable.

We have always been a rail shipper and prefer to be one in the future. Rail shipments best fit our business in Minne- [fol. 306] apolis and New York but the effectiveness of the rule has precluded us from using that service. If the rails are successful in maintaining this rule we are positive the truck lines will establish a similar rule. I have received notice from the Classification Bureau of the Middlewest Freight Bureau that hearings have been held on a similar, if not identical, rule to be incorporated in all truck tariffs. If this is done it will put us out of business, penalize the small shipper, and mean old eggs in New York.

The proper time and place to grade eggs is at the time and place of purchase. The producer delivers his eggs to the produce station, and sees them handled and checked for weight, quality, cleanliness and freshness. He is paid for the number of actual eggs in each grade classification. Thus, he becomes conscious of the necessity of taking good care of his eggs on the farm and is also very careful to deliver his eggs at frequent interval so as to insure the freshness desired by the consumer. This makes it a dollars and cents proposition for the farmer to do a good job. Under the old system, a dozen eggs were sold as a dozen eggs, and unless they were deteriorated to a point where they could no longer be used for human food, the farmer was paid the same price as for eggs given the proper care.

The produce station operating on a grade basis has its egg rehandled and repacked in new cases, and at the close of [fol. 307] the day's business the eggs are ready for shipment to the eastern markets in LCL lots. This eliminates the time element involved in holding current receipt eggs until a central plant operator and carload shipper picks them up and takes them to a larger station where they would be rehandled and repacked. The rehandling and repacking at a central plant means large numbers of cases

of eggs are received by truck and in turn warehoused until such time as it is convenient for the egg candlers to grade them. Thus, it is readily seen that by the time the eggs are rehandled and repacked for carload shipment it would take 72 hours longer than if the eggs were rehandled and repacked at the time of purchase. The individual shipper can ship a much finer and fresher egg in LCL quantities and can maintain his identity as a shipper of fine eggs.

The original purpose of a dairy forwarding company as it pertains to eggs was to give the smaller shipper, whether he be a commercial producer or a produce station, the advantage of a rate much lower than the LCL rate to the eastern consuming markets. This resulted in four distinct basic advantages for the producer and consumer as well. 1st: the shipper could eliminate a middleman's cost in the middlewest. 2nd; he could maintain his identify as a packer of fine merchandise. 3rd; he could ship a fresher egg than would be possible if current receipts were purchased, as such, from these producers, and in turn hauled to a central point before being graded and packed for shipment. 4th; [fol. 308] by the very nature of this operation, the greatest basic advantage to the producer and the consumer comes about almost automatically. Under the system of purchasing eggs on the basis of grade from the Producer, the producer received more money for clean, fresh, large eggs than did the producer who sold current receipts and received the same price for dirty or stale eggs as for fresh clean ones. Thus an incentive was created for grading eggs.

We, as an independent forwarder, set as a fair and impartial inspector of all shipments turned over to us by either common carriers or shippers' private trucks. Because we own and operate no trucks, and have no interest of any kind in any trucking or produce company, and do not ship our own product, there is no reason for our not acting as a fair and impartial inspector of these various shipments.

It is our understanding that the present rule changes on rehandling and repacking are a step to reduce high claims. It is our opinion the railroads are looking in the wrong direction for such correction. Certain corrective steps have already been taken by the railroads, such as more careful

handling of cars in transit, closer checking of damage in New York City, and having cars in better repair.

Our New York agent, as well as other egg receivers and handlers in the east, reported to us that egg claims in early 1948 were very much lower than they were for 1947. They [fol. 309], also advise that egg claims prior to 1943 were practically nil. Heavy damage became noticeable during the war years. Between January 1 and March 15, 1948, we had a 16 per cent increase over the same period in 1947 in the number of cars of eggs shipped. During that same period in 1948, claims decreased 38 per cent in January, 67 per cent in February and 66 per cent in the first 15 days of March, as compared to those same months in 1947. During these periods in 1947 and 1948, our method of inspecting, handling and loading the cars was the same. This substantial reduction of claims in both numbers and amounts while our method of doing business did not change, supports the information we received from our eastern agents that the railroads, by corrective practices instituted in their own organizations, were on the right track. If the railroads continue the same improvements within their own house, we think the claim situation will revert to what it was prior to 1943, when egg claims were practically nil. Today we load cars and brace the contents in a better manner than we did in 1943.

Three times within the last year representatives of the Western Weighing and Inspection Bureau have called at our place of business unannounced, and have inspected our method of doing business. Each time we were complimented very highly on our method of handling, loading, bracing, etc."

That will be the end of the statement.

[fol. 310] Mr. McDonald: May we have about half a minute?

Commr. Mitchell: We will let the Department of Agriculture cross examine him.

Cross-examination.

By Mr. Matson:

Q. Mr. Morken, what kind of inspection do you make at Minneapolis of these eggs in the course of your business?

A. We lift what averages out to be about 20 cases that go into a rail car of 600, or about 15 in a truck of 450 cases. We lift the top and the top layer, and then of course the visual damage, I mean for any wet spots.

Q. Could you explain that a little bit more? You say you do reject some cases of eggs. How bad does the case of eggs have to be to be rejected by you for forwarding purposes?

A. Well, if there is damaged eggs—let me explain it. I have been on that platform once, and I have seen the processing once. I have never seen a case rejected. It is my understanding that if there is breakage or it is wet or there is a good hole in it, it is turned down.

Q. You have a rule you will not accept them if not in proper condition for forwarding?

A. Yes, sir.

Mr. Matson: That is all. Thank you.

Exam. Mullen. You reject the whole case?

The Witness: That is right.

[fol. 311] Exam. Mullen: And the man can take the case back, remove the damaged eggs, and repack good eggs?

The Witness: Generally speaking, they sell them locally in Minneapolis to one of the creameries or stores.

Exam. Mullen: You reject the whole case if you find one egg damaged, or is there any percentage of damage?

The Witness: I don't know. I am sorry. I can't answer that.

Mr. McDonald: Mr. Commissioner, I would like to object at this time to the acceptance of this statement unless Mr. Morken is prepared to adopt it as his own personal testimony. If he is not, I would like to move that it be stricken from the record on the ground that the testimony is of Mr. S. F. Roberts, who is not present, and doesn't afford us a chance to cross examine thoroughly.

The Witness: I fully agree with your objection, although

I was assured by Mr. Knowlton that there would be no objection to my reading the statement.

Commr. Mitchell: What do you say, Mr. Morken? You are familiar with this, aren't you, this evidence here? Can't you adopt it? It is a very technical objection, but I suppose it is good if you insist on it. Can you adopt the testimony?

The Witness: Yes, I have no objection, and I think I am generally familiar with it.

Mr. McDonald: I withdraw the objection if he adopts it. [fol. 312] That is the way I made it.

Commr. Mitchell: Very well.

By Mr. McDonald:

Q. Mr. Morken, the first page of your statement, you speak of cars shipped to agents in the east. How would those cars be shipped? Would they be shipped in the name of your concern as the shipper and your concern as the consignee?

A. That is correct. They are billed on, say the rail issues a bill of lading in the name of Midwest Dairy, consigned to Midwest Dairy in New York, care of Morchee & Company.

Q. So your interest in this proceeding is that of a shipper and receiver primarily rather than the fact that your company is also a common carrier forwarder, isn't that so?

A. It is my understanding that the Supreme Court has said that we are not a common carrier, that we are a shipper.

Commr. Mitchell: They have said you are more than a shipper, aren't you?

The Witness: I think so.

Commr. Mitchell: Not just a shipper; you are more than a shipper.

The Witness: Yes.

By Mr. McDonald:

Q. Do you know whether or not in each case the eggs in the shipments are current receipts or any of the other classifications referred to?

A. None of them are current receipts.

[fol. 313] Q. How do you know that?

A. There just aren't any current receipts moving. We haven't had any current receipts go through Midwest Dairy in the three or four years that I have been familiar with the company. Everything that comes in is rehandled and repacked and a grade assigned to it.

Q. Do you know whether any actual check is made to see whether they are current receipts or not? Do you know that yourself?

A. Well, I don't know if I follow your question or not. I know that we get them on a bill of lading, where they are marked and certified as a certain grade by a shipper.

Q. You accept that on that basis?

A. Yes, sir.

Q. You don't know yourself whether or not that is the fact, isn't that so?

A. That is right.

Q. Now, you say here that this shipment that you refer to in the first paragraph that begins on page 2 is a typical transaction. You personally are sure of that?

A. Well, I could pick out any number of points. Yes, I think it is a very typical example.

Q. You say that this general store, generally, never keeps an egg in its store over 48 hours. How do you know that?

A. Well, I don't.

Q. So you want to correct that statement?

[fol. 314] A. I don't know that you work for a railroad other than that you told me.

Q. You have testified here, have you not, generally speaking it never keeps an egg in its store over 48 hours because three times a week, and so on. Now, I ask you if you know that and meant it, or do you wish to have it withdrawn?

A. Maybe I can explain it this way. We have a solicitor, Les Neilsen. He calls on these fellows, I don't know how frequently, but at least once a month, and at times oftener. He is in their place of business, well familiar with it. He brings that information down to us at Minneapolis. He tells me that Herberger-Cruse handle their eggs this way. That is my total knowledge. I don't care to change the statement.

Q. Do you know yourself whether that is the fact or not, to your own personal knowledge?

A. I have never been in Herberger Cruse store, no.

Q. Would your solicitor know it as a matter of fact?

A. I think he would.

Q. Do you know whether or not Mr. Roberts would, as a matter of fact, of his own personal knowledge, know whether or not that was the true statement?

A. I don't think he would have any different knowledge than I have. He would know what the solicitor told him.

Q. Now, you say in the next to last paragraph on that page that if country shippers didn't have the service of [fol. 315] a forwarder such as your concern, it would be necessary to consolidate their own products, and it would take them a week or ten days to accumulate enough eggs to fill a car. Why would that necessarily be so? Couldn't three or four or any number of country forwarders consolidate and forward a car on the same day that Midwest does it?

A. Some do.

Q. They could either ship less than carload directly or they could, on the same day that you would make a shipment, consolidate a shipment, isn't that a fact?

A. They do the same thing that we do only we consolidate it for them.

Q. In the absence of that service, they could do it themselves and ship it the same day, could they not?

A. I don't think so. I don't think they are set up to do it.

Q. Do you know?

A. If they could, they would do it and bypass us.

Q. Do you know, Mr. Morken?

A. I know they use our service.

Q. I understand that fully. I ask you again do you know whether or not that is a fact?

A. Do you mean——

Q. Do you know whether it is done now at the present time? Haven't you just told me it was?

A. By some shippers, yes.

[fol. 316] Q. So it is possible to do it without the assistance or service of your company, isn't that so?

A. It is possible, yes.

Q. In that case it wouldn't mean, would it, that it would take them a week or ten days to accumulate enough products to fill a car and another week or ten days for that car to travel from that point to New York. It would take them exactly the time it takes you to offer the car for shipment and for the car to be transported, isn't that a fact?

A. No, it isn't. If Herberger-Cruse got together with three or four other boys in other towns and somebody trucked their eggs into one point—and they loaded together at Cruse's loading point, they could do the same thing as we could.

Q. You have already told them that is being done?

Commr. Mitchell: What you are really testifying to is that that is the only available service at this time?

The Witness: Yes, sir.

Commr. Mitchell: That is all that is necessary.

By Mr. McDonald:

Q. On the bottom, the last paragraph of that page, you say your company is strongly opposed to the present rules and regulations maintained by the carriers on eggs, and in particular the regulation which says that all eggs must be rehandled and repacked at the point of rail origin, or they must be shipped as current receipts subject to an arbitrary damage allowance of 5 per cent. Will you tell [fol. 317] me what that is based on?

A. Well, I could read my whole statement all over again on that. What it is based on is that we haven't the facilities in Minneapolis to rehandle and repack them, and they aren't our eggs, anyway, and the shippers won't do it. If we don't ship them by truck, we are out of business.

Q. So because of that personal disability on the part of you or your company, you object to this procedure, is that the simple way of stating it?

A. Yes, sir, and we object very strongly.

Commr. Mitchell: Is there further cross examination?

Mr. McDonald: Yes, sir.

By Mr. McDonald:

Q. You say in the second paragraph, beginning on the next page, that Midwest participated in a hearing before the Consolidated Freight Classification when these proposed rules and regulations were discussed. At that time the rails were claiming, so on and so forth.

You mean that? Wasn't it in fact a hearing devoted substantially to developing the views and suggestions of the trade itself? Wasn't it more or less a one sided proposition at that time? Was there any discussion at that time of what the carriers did or did not advocate?

A. Yes, there was.

Q. Were you at that hearing?

A. Yes, I was.

[fol. 318] Q. Is it your position that at that hearing the rail carriers were actually claiming certain things themselves and were not confining that hearing to a development of the views of the shippers?

Commr. Mitchell: He said that now three times, Mr. McDonald. We are not hearing a technical cross examination. We are here trying to get the facts. This man has told you what he believes.

The Witness: Mr. Jensen and a gentleman from the Western Weighing & Inspection made statements at that hearing that are very similar to the ones they made here today.

By Mr. McDonald:

Q. Lower down in that large paragraph, you say when the rules and regulations with regard to handling and repacking became effective, you were forced to make all your shipments of eggs by truck.

A. Right.

Q. Have you made any shipments by rail at all since that time?

A. Yes. Either one or two cars to Philadelphia. None to New York.

Q. Since that time have the trucks continued to handle the business?

A. Yes.

Q. Rail carriers are no longer handling any of it with the single exception of the one or two cars you speak of?

A. No. They are handling butter.

[fol. 319] Q. We are talking about eggs.

A. No, no eggs by railroad.

Q. Is truck service satisfactory from your standpoint?

A. No.

Q. What is the objection to the truck service? Didn't I understand from your testimony that they make better time over the road, and so forth.

A. They do.

Q. Would you let us know the nature of your objection to truck service?

A. Well, in the first place, our dock is small in Minneapolis. You back up a couple of trailers there to be loaded during the day time, and we don't have enough space when our eggs come in from the country. Our facilities are small in Minneapolis. We can load four cars at the same time on the rail cars and have all of our dock space available. That is one of the things.

The truckers are not as good as the railroad on paying their claims. We have had trouble collecting claims.

Q. Would you say that again, please?

A. Then in New York the same thing is set up. Our agent in New York isn't set up to handle trucks as well as he is to handle rail. And we want to be able to use both of them. We don't want to be in the position where we are now confined with one. If the trucks went hog-wild on [fol. 320] their rates, we would be stuck. We should have the right to use both types of service, truck and rail.

Q. Is the fact that the trucks don't pay their claims promptly a controlling factor?

A. No. Every claim we have had has been settled. They are slow. That is what I mean.

Q. What about the tolerance question? On the next page where you discussed tolerance, what do you understand to be the reason for the proposal to the trucks to publish a rule similar to the rail carriers, if their experience in handling eggs has been as satisfactory, as I gather from your statement?

A. Well, it has been my experience that every time the railroads do something, the trucks do it too. I didn't intend any classification here, in why the trucks are going to put it in really, I don't know. That hearing was held in Detroit very early this summer, I think it may have been April, May, along in there.

Q. What is your position, please, with respect to this tolerance question?

A. Well, I think 5 per cent is very arbitrary and high. I think this, very similar to Carl Nelson who was on the stand for Northwest Dairy. I think an allowance may be of about 2 per cent could be worked out, and we would be able to agree to it.

Q. You are aware, are you not, that the 5 per cent [fol. 321] tolerance has been a tariff provision for many years?

A. On current receipts, yes.

Q. Is it your position that it has been unreasonable or unduly high during that entire period?

A. In my experience it didn't make any difference because no current receipts were shipped.

Q. Do you know that to be a fact?

A. As far as Midwest, I know it is a fact.

Q. How long has Midwest been in existence?

A. My experience with them runs from the latter part of 1945, really about two and a half to three years.

Q. Wouldn't it be correct to say that there were none shipped during that time because they weren't described as such on the bill of lading delivered to you?

A. Yes.

Q. Now you say that the proper time and place to grade eggs is at the time and place of purchase?

A. Correct.

Q. Despite the education I have had here in the last day or so, I am not sure if I understand the technical meaning of the word grade there. Would that include inspection in the broad sense of the word? Is that what you mean by grading as you use it here?

A. Holding them up to a candle so that they are either A, B or C.

[fol. 322] Q. See whether or not they are check, damaged, and so on?

A. Yes.

Q. So you say the proper time and place to do that is at the time and place of purchase?

A. Right.

Q. The time and place of purchase in some instances, at least, at the point of rail shipment?

A. Some of them, are, yes.

Q. Would you still say that is the proper place for inspection, and would I infer from that that you wouldn't think it was proper to likewise inspect them at destination?

A. I didn't follow that.

Commr. Mitchell: What is the purpose of this examination?

Mr. McDonald: I want to see what he is contending here.

Commr. Mitchell: It seems to me wasting a lot of time.

Mr. McDonald: I don't mean to, Mr. Commissioner. He is saying the place to be inspected is the point of origin.

Commr. Mitchell: Well, go ahead, but don't take any more time than is necessary. This is no technical cross examination.

Mr. McDonald: I don't mean to make it so.

Commr. Mitchell: That is what you are doing.

Mr. McDonald: Will you read the last question?

(The last question was read by the reporter.)

The Witness: Sure you would have to inspect them at [fol. 323] destination, too, to determine if there was any damage en route.

Q. What you actually mean is that eggs must be inspected at both ends at least, is that it?

A. Oh, yes, yes.

Q. You say in the first paragraph that begins on page 5 that as an independent forwarder you act as a fair, impartial inspector of all shipments turned over to you. Do you actually inspect them as they are received by you?

A. Yes. The trucks back up, and of course the first

inspection, why you can see if any of the cases are wet.

Q. May I interrupt you? This first inspection, where does that take place?

A. As the eggs are loaded from the trucks they are either set on the dock or they are set on one of these conveyor roller chains that will run right into the car or run right into the truck. In a box car that has around 600 cases, the lids on about 20 cases are lifted.

Q. You couldn't really tell whether or not there were any checks in a car that way, could you?

A. Well, if they are visible when you lift the lid, you see them. If they aren't, why, no. You load them in the car.

Q. In the next paragraph, you say certain corrective steps have been taken by the railroad. Do you know whether that is the fact or not?

A. As advised by, rather, S. F. Roberts was advised by [fol. 324] solicitor for the Erie Railroad on some steps that were taken down there.

Q. You don't know whether that is generally true, do you?

A. No. I mean it involved the rest of some men and form, and this fellow came up and told us about it, and I wasn't there. I don't know what it was.

Q. The last paragraph on sheet 5, you speak of your New York agent reporting in effect that 1948 egg claims were very much lower than they were in 1947. Do you mean that to go to both number of claims and the amounts thereof, or simply the number of claims?

A. Both.

Q. Would we correctly understand that you offer that as the experience of your own company only?

A. That is all.

Q. You don't mean that to be a report by your New York agent?

A. I think it is generally meant that, but I only have the figures on Midwest here, and that is all I know about.

Q. I wonder if you would mind telling me more of the basis for your conclusion, a little more than halfway down, where you say that this substantial reduction of claims, assuming that there was a substantial reduction, in both number and amount, while your method of doing

business didn't change, supports the information you received from your eastern agent that the railroads were on the right track. That is just a supposition or a personal conclusion that you are jumping to there, isn't [fol. 325] it?

A. Sure.

Commr. Mitchell: Is it your contention that the railroad didn't take any corrective steps?

Mr. McDonald: No.

Commr. Mitchell: What are you arguing with him about?

Mr. McDonald: I am asking if he can tell me——

Commr. Mitchell: The record shows that the claims were less.

Mr. McDonald: It is not indicative that there was no damage, it seems to me. You have expressed the opinion from the bench that—perhaps you have not done it, but if this witness says it is so, and I can prove it is so, I want to prove my point.

Commr. Mitchell: Proceed with the cross examination instead of making a speech.

Mr. McDonald: I didn't mean to. That is all I have.

Commr. Mitchell: Further cross examination?

Mr. Matson: One more question.

By Mr. Matson:

Q. Mr. Morken, if this so called 2 per cent tolerance suggested by counsel for the carriers were established, would you be in position to pass that back to your shippers or would you have to absorb it yourself?

A. No. It is my understanding that the boys in the east would absorb it. If they didn't and the shipper didn't absorb it, I guess we would. I don't know where it [fol. 326] is going to go yet.

Q. Now, if the receiver in the east passes it back to you, would you make any effort to pass it back to the shipper?

A. Yes, we would.

Mr. Matson: Thank you very much. That is all.

Commr. Mitchell: Is there further cross examination?

Thank you, Mr. Morken.

(Witness excused.)

Commr. Mitchell: Is there any objection to Exhibit 24?
Mr. McDonald: No objection.
Commr. Mitchell: It may be received.

(Midwest Dairy Exhibit No. 24, Witness Roberts (By Donald Morken) received in evidence.)

Mr. Zearfaus: I might state at this time the defendants have no objection to the introduction of Exhibit 23 by Witness Miller without cross examination.
Mr. Matson: May the witness be excused then, Your Honor?
Mr. Knowlton: Yes.
Commr. Mitchell: He may be excused, and Exhibit 23 by Witness Miller will be received.

(Dept. of Agri. Exhibit No. 23, Witness Miller, received in evidence.)

Commr. Mitchell: You may call your witness, Mr. Krebill.
Mr. Krebill: At this time I ask that the document which is headed Summary Statement of Shell Eggs, received at New York, be identified as Exhibit 25.
[fol. 327] Commr. Mitchell: Summary of Shell Eggs received in New York Quartermaster Market Center will be marked Exhibit 25 for identification.

(Army and Air Force Exhibit No. 25, Mr. Streving, marked for identification.)

Mr. Krebill: And the next document, Summary Statement of Shell Eggs Received at Richmond, Virginia, Quartermaster Market Center.
Commr. Mitchell: It will be marked Exhibit No. 26 for identification.

(Army and Air Force Exhibit No. 26, Mr. Streving, marked for identification.)

W. F. STREVING was sworn and testified as follows:

Direct examination.

By Mr. Krebill:

Q. State your name and address?

A. W. F. Streving. I live at Falls Church, Fairfax County, metropolitan area of Washington, D. C.

Exam. Mullen: That is in Virginia?

The Witness: Yes.

By Mr. Krebill:

Q. Where are you employed?

A. I am employed by Department of the Army, Transportation Corps, Office Chief of Transportation as a transportation specialist.

Q. What are your duties in that position?

[fol. 328] A. My duties are making research in rate matters, rules, regulations, and working up data to be used in proceedings.

Q. What has been your experience in transportation work?

A. I have been with the Department of the Army for seven and a half years as a transportation specialist. Almost two years with the Department of Agriculture as a supervisor of claims adjudicators, claims division. Prior to that various positions in the rate and accounting with rail and motor carriers.

Q. Have you made a study in connection with your position so that you can tell what the effect of the 5 per cent tolerance rule is?

A. I was delegated to make this study and I have made it at New York and at Richmond, Virginia.

Q. What departments of the national military establishments are affected?

A. The Quartermaster Corps of the Army, which is serving for the Department of the Army, for the Department of the Air Force, and the Department of the Navy. In other words, the entire military establishment, and I will call it from now on the national military establishment.

Q. Would you explain briefly for the record what your understanding is of the 5 per cent tolerance rule and how it affects shipments for the national military establishment?

A. The 5 per cent tolerance rule will affect the national military insofar as they are compelled under the procure- [fol. 329] ment program to go out of rail point, on rail points to off rail points in procurement area because sometimes the supply will not meet the demand. The procurement officer has to get the eggs wherever he can, consolidate them, or do anything he sees fit at that particular time.

Q. Would the national military establishment be adversely affected by the continuance of the 5 per cent tolerance rule?

A. Yes, it would.

Commr. Mitchell: What was that?

The Witness: Yes, it would.

Commr. Mitchell: I didn't quite understand your explanation of how it would be affected.

The Witness: We have to go out, Mr. Commissioner, to procure eggs from off rail points. Suppose we have Chicago here, and we cannot get our quota here. We go naturally out and buy it in other cities, and it may be a city where there is no rail point, and it would have to be trucked in.

Commr. Mitchell: You have to do that now, don't you, before the 5 per cent tolerance?

The Witness: We did it always.

Commr. Mitchell: That hasn't changed any, has it?

The Witness: We would be affected by the claims.

Commr. Mitchell: Well, if you bought your eggs out in the country, and they were good eggs, you wouldn't have any claims, would you?

[fol. 330] If the railroad didn't break them on the way down.

The Witness: That is right. If they were handled right.

Commr. Mitchell: So your only objection is that your claim would be affected by the 5 per cent tolerance?

The Witness: That is correct.

By Mr. Krebill:

Q. In other words, the 5 per cent tolerance affects the amount that can be claimed for damage which results in the rail shipment?

A. That is correct, sir.

Q. Are there any other aspects contained in the special rules and regulations which may be detrimental to the national military establishment?

A. I sincerely believe so because it would make the claim settlements more confusing, more cumbersome, because you would have to probably go out at times and find out who the shipper was. Is the shipper located at a so-called rail point or is he off the rail. It would entail more investigation, and it might be even for the railroads, as far as the claim work is concerned, it would entail more work and more cost so that the benefit of the carrier would be offset by that.

Q. Did you prepare the document which has been marked Exhibit 25?

A. I have personally prepared that, yes.

Q. What is the basis of the information contained in that document?

[fol. 331] A. I have made research at New York of actual records furnished there. I have the correct dates here somewhere. September 13, to 18, inclusive, at New York, at the Quartermaster Market Center, where receipt copies were made available to me, and this is the result of these studies.

Q. Will you explain the document which has been marked Exhibit 25?

A. Exhibit No. 25 consisting of five pages represents a typical port installation. The exhibit is self explanatory. Page 1 contains a summary of pages 2, 3 and 4 indicating a reading from left to right the number of damaged cars received, cases contained in carloads, cases reported as damaged, which reflects in substance notation as made on the original government bill of lading. Percentage column shows that 42.6 per cent were reported damaged in these cars.

Exam. Mullen: Just a moment, Mr. Streving. We don't understand that column. Does that mean those cars were

reported damaged at point of origin and so noted on bill of lading?

The Witness: No, it is destination damage that I confine my studies to.

Exam. Mullen: How was that ascertained?

The Witness: The receipted copy, which is in substance a duplicate of the government bill of lading.

Exam. Mullen: Who reported those cars as damaged?

The Witness: The transportation agent at New York.

[fol. 332] Exam. Mullen: Your transportation agent?

The Witness: Yes.

Exam. Mullen: Was he an employee?

The Witness: Of the military establishment. That is taken off the records.

Exam. Mullen: Where were the cars when he reported them as damaged? Were they delivered?

The Witness: New York or New York installation.

Exam. Mullen: QMB posts?

The Witness: Yes, railroad.

Exam. Mullen: All the eggs included in these cars are classified as rehandled and repacked eggs?

The Witness: That is right, grade 1 and 2.

Exam. Mullen: Are they rehandled and repacked as defined in the tariff?

The Witness: Yes, sir.

By Mr. Krebill:

Q. Could it be that some of those cars had or that the *cars* in those cars had a prior truck movement without being rehandled and repacked at the rail origin?

A. That could be. I did not ascertain that.

Q. Will you proceed with your explanation of the exhibit?

A. Column cases lost or rejected on basis of settlement with carrier, that is the finance office, actual settlement of claim. It indicates that the actual loss in cases was only 5.233 per cent after adjustment.

[fol. 333] Q. Did you explain the meaning of the last column there, which is the annual loss, dollars and cents?

A. At that point I might ask to make a correction and strike that reference mark. That doesn't belong there, in the last column, 190.

Commr. Mitchell: You desire to strike that out, do you?
The Witness: Yes.
Commr. Mitchell: It may be stricken out.

By Mr. Krebill:

Q. I notice at the top of the exhibit there, about the fourth column, headed cars reported as damaged on government bill of lading. You mean cases, do you not, instead of cars?
A. Yes, that is right.

Mr. Krebill: May I ask that that correction be made?
Exam. Mullen: Just a moment. On the next column, cases lost or rejected on basis of settlement with carriers.
The Witness: That is the actual loss where the army settled with the carriers.
Exam. Mullen: So in that instance you only paid on the basis of 5.23 per cent?
The Witness: That is correct, sir.

By Mr. Krebill:

Q. In other words, in the column marked cases reported as damaged, that is the notation which is made on the government bill of lading at time of delivery?
A. That is correct.
[fol. 334] Q. While the next is the actual damage settlement?

Exam. Mullen: And that only amounted to 5.23 per cent of the number of cases?
The Witness: Of the number of cases, yes.

By Mr. Krebill:

Q. Now, will you explain the bottom part of the exhibit, which is headed recapitulation of three year period?
A. First, No. 1 shows that 2519 cars of shell eggs were over a three year period destined to New York and unloaded, which is 1,500,114 cases, constituting 100 per cent. The average value of that was $21,174,714.

The cars received damaged as reported on government bills of lading shows that 304 cars were damaged, that

181,201 cases were contained in the cars, and that of that the damage in loads pertaining to the 304 cars was 11.99, and constitutes a value of $2,538,636.46.

The cases lost or rejected on basis of settlement with carriers shows only the net which was 9,483 cases, which is 5.233 per cent, as before stated, and the value of that, net value of the commodity on the average price was $31,706.72. The recoopering, rehandling charges amounted to approximately $59,537, making a total of $90,760.51 as stated above.

Commr. Mitchell: That all covers the war years, doesn't it?

The Witness: This covers 1944, '45, and '46, Mr. Commissioner.

Commr. Mitchell: Those were war years, weren't they mainly?

[fol. 335] The Witness: That is right, yes.

Commr. Mitchell: You weren't confronted with it during those years? I notice your shipments in 1948 were pretty light, weren't they?

The Witness: Yes.

Commr. Mitchell: You only had four cars that were damaged.

The Witness: That is right.

Commr. Mitchell: How many eggs do you buy a month, how many carloads?

The Witness: Why, I don't know exactly. I can give you the figures—I don't know whether I can give you the figures on the carload, but it is quite an amount. We had procured for 1947, the total market center system, 70,447,406 dozen.

Commr. Mitchell: Of course, those are not all shipped into New York?

The Witness: No; but the bulk of it goes there. In 1948, we had 59,000,000 roughly speaking.

By Mr. Krebill:

Q. Can you state why you cut this exhibit off at 1946?

A. The records at New York were not complete as to the other years and were not available at the time when I was there.

Q. Now, pages 2, 3 and 4 of this exhibit are a breakdown of what is shown on page 1, is that not correct?

A. That is correct.

Q. What is page 5 intended to show?

[fol. 336] A. Page 5 intends to show the claims which are incurred in one year, but not always settled in the same year. It will be noted that claims incurred in 1944 were settled in 1944 up to 41.7 per cent. In 1945, 51.6 per cent. In 1946, 5.5 per cent. In 1947, 1.2 per cent. That makes 100.

Q. In other words, the percentage or the amount of claims settled in any one year does not necessarily mean that that covers transportation which was performed during that year?

A. That is correct. It may to a certain extent distort the claim picture.

Q. And if there has been a reduction in traffic, the fact that there was a high claim figure would not be related directly to the traffic that moved during that year?

A. That is correct.

Commr. Mitchell: I don't see the value of this 1944, '45, and '46 record. That is an abnormal time. It isn't of any value at this time, is it?

The Witness: It has only value, Mr. Commissioner, insofar as it shows past experience in claims.

Commr. Mitchell: We are trying to get away from that claim business. We don't want any more of these claims. 1945 and 1944 were war years, abnormal years. I don't see where it is any value in this record at all.

The Witness: The army would appreciate it if they could get away from it.

[fol. 337] Commr. Mitchell: They ship 93 per cent of your eggs by truck now, don't they, for the army?

The Witness: In certain instances we get down to that.

Commr. Mitchell: 93 per cent, isn't it?

The Witness: By truck? No, only in certain installations. On inland installations we may have that condition.

Mr. Krebill: This exhibit will tend to show that even during the war years, when transportation facilities were not perhaps as favorable as they are today, even then the

experience of the national military establishment has been that the damage has not been as high as the general average as was shown in the exhibits which were presented yesterday, and therefore by having an arbitrary tolerance figure of 5 per cent or any other figure would not be proper as to each shipper.

Commr. Mitchell: Well, go ahead. I don't see much value in it myself.

By Mr. Krebill:

Q. Will you continue with your explanation now of Exhibit No. 26?

A. Exhibit No. 26 is practically the same as New York except that it covers the period 1945, '46, '47 and '48.

Commr. Mitchell: That is at Richmond?

The Witness: Yes, at Richmond.

The columns run corresponding to the New York study and can easily be followed, I believe, so it is unnecessary to take any more time for explanation.

[fol. 338] I might only say that in comparison to New York, it shows that we have only .0327 per cent to the total loss, to the total received, and that probably can be explained that Richmond is an inland installation while New York is a port installation, heavier terminal handling.

By Mr. Krebill:

Q. Now, what is the comparative damage experience in shipments received by rail or those received by motor truck?

A. The study at Richmond revealed that we have received during the four year period 1817 shipments by truck and no transportation damage was reported, although there was grading damage.

Q. What was the inspection accorded the shipments which arrived by truck?

A. The inspector, if that is your question, vindicated the trucks, didn't find any damage.

Q. What kind of an inspection is given to shipments arriving by truck as compared to inspection by rail?

A. The same class 3 inspection, or class 4, whatever

pertains at the particular installation, is given to the rail shipments. They are treated the same as rail shipments.

. . . . . .

[fol. 339] Afternoon Session

1:30 p.m.

W. F. Streving resumed the stand and testified further as follows:

Commr. Mitchell: Do you desire to wait, Mr. Knowlton, until the others get back?

Mr. Knowlton: No, I am ready to proceed.

Commr. Mitchell: Everybody else is represented here, I guess, except some of the railroad people.

Mr. Knowlton: I told them I would come over and we would go ahead.

Commr. Mitchell: All right. We will proceed.

Direct examination (Continued).

By Mr. Krebill:

Q. Mr. Streving, what is your opinion as to the propriety of having a percentage tolerance rule?

A. I believe there should be no percentage tolerance rule.

Q. And on what do you base that?

A. If you have it on shell eggs, you might as well have it on other commodities, too, because you have commodities which might be just as perishable as eggs, such as fresh fruits and vegetables.

Q. How about differences in the manner of packing or crating of eggs?

A. They would account to a certain extent for it, but [fol. 340] whether it compensates it or not, I don't know.

Q. Well, do you think that there would be a substantial difference as between one egg shipper from another?

A. I would say that as far as the national military establishment is concerned, because we give our eggs a very rigid inspection at origin as well as at destination. Conse-

quently, our claim losses as reflected are probably in the aggregate less.

Mr. Krebill: That completes the direct examination of this witness.

Commr. Mitchell: What do you suggest should be put into effect here?

The Witness: I wouldn't have any definite suggestion. I would suggest that no tolerance rule be put in.

Commr. Mitchell: You don't believe, or the national military establishment doesn't believe, that the railroads should lose money hauling eggs to New York, does it?

The Witness: That isn't the policy of the department.

Commr. Mitchell: Now, where a record shows, such as this record shows, the terrific amount of claims paid on the New York business——

The Witness: That is probably in commercial. We have no knowledge of it. It does not reflect it on the military establishment.

Commr. Mitchell: But there is one exhibit here in 1947 [fol. 341] that shows it was better than 50 per cent of the total gross amount received by the railroad, which was paid back in claims.

The Witness: No, it was not paid back. You mean on other exhibits? Not on ours.

Commr. Mitchell: No, not on your exhibits. I am talking about the exhibit that Mr. Hodkinson put in.

The Witness: That is a different story. I have no knowledge of that.

Commr. Mitchell: Now, the record shows of these experts in eggs that there is a breakage, a damage in eggs. Apparently it can't be prevented.

The Witness: It is a hard solution, Mr. Commissioner.

Commr. Mitchell: Well, to say that a thing is hard, isn't sufficient. It has to be solved. We learned in the army you never can say you can't.

The Witness: It is difficult to solve.

Commr. Mitchell: We have to solve it. That is our problem. But you have no——

The Witness: I would have no opinion on that.

Commr. Mitchell: All right. Cross examination?

Cross-examination.

By Mr. Knowlton:

Q. Mr. Streving, do you handle the claims personally?

A. No, not at the present time.

Q. Did you handle these claims upon which you have [fol. 342] given the statistical information?

A. I have handled the claims only from the statistical end and investigated them from the finance office, verified them with them.

Q. That is just within your own organization?

A. That is right.

Q. Have you in your statistical compilations compiled the amount of damage at origin on your shipments?

A. No, I have not. This only reflects destination damage.

Q. Why didn't you give the Commission the full picture and compile the damage at origin?

A. It was physically impossible.

Q. Doesn't the army have inspection reports on every car they buy?

A. They have.

Q. Then you had the information available, didn't you?

A. I did not.

Q. You couldn't get it?

A. Not in that time.

Q. Well, if you didn't have the complete picture and you left out the damage at origin, how can you draw conclusions?

A. We can draw pretty well conclusions, as I stated before, our inspection at origin is much more rigid and another witness will cover that.

Q. Well, you just say it is more rigid, but you don't [fol. 343] give us any results. Now, is it fair to ask the Commission to draw a conclusion with that important part of the information omitted from your statistics? Is that a businesslike way of presenting something, do you think?

A. I think we have presented the best picture which was obtainable.

Q. That is because you didn't have time, is that right?

A. That is right.

Q. If you had had time, you would have presented a different picture, would you?

A. I don't know that it would be different.

Mr. Knowlton: That is all.

Commr. Mitchell: Are there any other questions on cross examination?

Thank you, sir.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Krebill: I wish at this time to offer Exhibits 25 and 26.

Commr. Mitchell: Is there any objection to Exhibits 25 and 26?

Mr. Knowlton: No objection.

Commr. Mitchell: They may be admitted.

(Army and Air Force Exhibits Nos. 25 and 26, Mr. Streving, received in evidence.)

[fol. 344] CHARLES H. SNIDER was sworn and testified as follows:

Direct examination.

By Mr. Krebill:

Q. Will you state your name and assignment, please?

A. Major Charles H. Snider, Quartermaster Corps Inspection Service, Assistant to the Headquarters Veterinarian, 226 West Jackson, Chicago.

Q. What are your duties, Major Snider?

A. At the present time I am in charge of inspection and requesting of inspection of dairy and poultry products at the headquarters of the Quartermaster Corps Inspection Service at 226 West Jackson.

Q. Are you familiar with the inspection examination of eggs at points of origin?

A. Yes.

Q. Will you describe what that is?

A. The procedure of inspection of eggs by the Army

Veterinary Corps, when a contract is entered into by the purchasing and contracting officer at the Quartermaster Market Center System, the vendor who is awarded the contract, states at what point the eggs will be ready for inspection, and at what date for inspection to make the required delivery date of the purchase.

When this purchase order is written, it is forwarded to the inspectors in the field in that area where the eggs will [fol. 345] originate, with a request to make a class 3 inspection or an inspection at origin of this carload of eggs. Upon receipt of this inspection request, the inspector will proceed to the vendor's plant and conduct his inspection on that date specified on the purchase order.

The vendor will assemble the eggs, for example, a 600 case car, at this point, and no inspection is started until the entire shipment as called for in the contract is presented for inspection. These eggs might be processed at this origin point or they might have been brought in from nearby points.

Upon the start of the inspection, the vendor points out which 600 cases or which lot it might be that he wishes to offer, and the inspector takes a representative 5 per cent sample of all these eggs. In taking that sample, he is very careful that he does get a representative sample. In other words, if the 600 cases are lined out for him, he will take one from the top of the pile, one from the bottom, one from the back, one from the middle, and so forth, until he has a representative 5 per cent sample. In a 600 case car this would include 30 cases which he would inspect.

After the cases are open, he inspects 100 eggs in each case. Those eggs are taken in a systematic manner. For instance, the first case would be the first 100 eggs in the first, second and third flat. In the next case, he would take the second, third and fourth of one end; next case, third, fourth and fifth of one end; and the next case, [fol. 346] the first, second and third of the other end, and so forth. In that way he gets representative samples throughout each individual case.

After he starts his inspection, he regards each individual egg of each case. After the 30 cases are inspected, the total of the 3,000 eggs are averaged in the individual

columns to establish a grade of this carload of eggs. On his report, he also shows the vendor's name, the contract number, the date of inspection, the type of inspection, his name, seal numbers of the car, type of cases, method of strapping, and other details that perfain to the contract.

After his inspection is completed and is totalled, and the grade on his car established, they are either accepted or rejected on the basis of the grade found, and at that time the cases are all stamped with the army veterinary stamp and taken to the car for loading.

Now, in some instances the car is at the origin point, sometimes the eggs might be taken anywhere from a block to several miles to the railroad car for loading into the car. The inspector examines the car for various things, particularly taking in the fact of the sanitary aspects of the car, as to odors, cleanliness, and so forth, checking the car number, the actual method of loading that is being used, whether it is satisfactory or not; the handling of the cases; and finally the sealing and closing of the car. [fol. 347] In that way he knows actually that the eggs that he inspected are the ones that went in a particular car. Upon completion of that inspection, he forwards report of the class 3 to the procuring market center, and he also puts a copy of the report in the car and mails one to the receiving agency.

That, briefly, is the inspection that is carried out.

Q. Were you here in the room yesterday when Mr. Hodkinson testified?

A. Yes.

Q. Did you see Exhibit No. 11 which he introduced?

A. I don't recall it by number.

Q. Well, on this exhibit he shows that during the year 1947 that, just roughly, about one case out of every three or four received was damaged. While the exhibit introduced by Mr. Streving today indicates that the national military establishment experience is considerably different from that. I haven't averaged it, but I believe it is about one case out of 20. How do you account for that difference, or do you have any opinion on that?

A. Well, our inspection at origin, eggs that are offered

to us, has shown that we don't have a large amount of damage at the time of inspection. In other words, the eggs are started in a good condition.

Commr. Mitchell: Do you have a tolerance in your inspection?

The Witness: Our eggs are graded on the same stand-[fol. 348] ards for individual eggs as set forth by the Department of Agriculture. The purchasing or procurement of eggs by the Quartermaster is made on procurement grades, and they are practically the same as the Department of Agriculture. We do have tolerances in our grades.

Commr. Mitchell: When you accept shipment of a car from a vendor, it is not 100 per cent perfect then, is it?

The Witness: No, sir, not from the viewpoint that there are some eggs that are coming under the tolerance, but still would meet the grade.

By Mr. Krebill:

Q. Could you state briefly what the procurement specifications are?

A. You mean the individual requirements of each grade?

Q. Yes?

A. For export we buy only what we call Quartermaster 1, or QMC-1. It is comparable to the consumer grade A as set forth by Mr. Hamann. That requires 80 per cent A, with a 5 per cent tolerance permitted. We would permit 15 per cent B grade. In this tolerance of 5 per cent can be stains, checks, leakers, broken eggs, and loss.

The AMC-2, which we don't buy for export, that is for domestic use, requires 60 per cent A's, and permits a tolerance of 10 per cent, the remainder being B eggs.

Q. Now what happens if they do not come up to those specifications?

[fol. 349] A. If the eggs do not reach the specifications at origin, they are reported to the purchasing and contracting officer, and he has the right to accept or reject.

Mr. Krebill: That completes my examination.

Commr. Mitchell: Is there cross examination?

Cross-examination.

By Mr. Knowlton:

Q. Could we go into that just a little further, all those grades? Is it true that in your higher grade eggs, there could be up to 5 per cent shell damage providing not more than one-half per cent were leakers?

A. When we speak of shell damage——

Q. That is leakers, checks and stains. That is why I put it that way.

A. That is what you consider shell damage?

Q. Yes, and I know that the rules provide only, say, a half per cent of leakers.

A. That is right.

Q. I am under the impression that the maximum tolerance would be about a half per cent leakers and up to four and a half per cent checks and stains. Is that correct?

A. That is right. We consider a stained egg or a checked egg as an edible egg, and that egg is graded for grade only. We do not consider that as damage or loss to the army. Now, a leaker or broken is damaged, and that is loss to us, but we regard a checked and a stain as only an egg to be considered for grading factor and [fol. 350] not absolute damage or loss because you can still eat that egg.

Q. Do you have anything to do with the presentation of claims?

A. No, sir.

Q. Your work is solely inspection at origin?

A. That is right.

Q. Do you have any compilations showing the amount of damage at origin?

A. I do not have any myself, no. I think the figures that Mr. Miller presented contains some of that information.

Q. Do you transmit these origin inspections to the people that file the claims with the railroads?

A. The purchasing office, purchasing agent, receives a copy of the inspection report. The destination inspector receives a copy of that report.

Q. You wouldn't know whether they are used for claims?

A. No, sir.

Mr. Knowlton: That is all I have. Thank you.

Exam. Mullen: Where do you have your inspection at origin, in what place?

The Witness: At the point where the vendor assembles the complete shipment of eggs. In other words, if the contract is written for 600 cases of eggs at Sauk Center, Minnesota, we will say, our inspection would be at Sauk Center.

Exam. Mullen: It wouldn't necessarily in every case be [fol. 351] at the railroad station?

The Witness: No, sir. It is possible that we would inspect those eggs at Sauk Center, and the eggs be taken a half mile or a mile to the railroad car.

Exam. Mullen: How would the vendor get the eggs to his station at Sauk Center for your inspection?

The Witness: It would be trucked.

Exam. Mullen: The vendor procures his eggs at various points in the countryside and trucks them into his place of business?

The Witness: That is right. There might be two ways that that would be done. One would be a direct hauling from the farm to his place of assembly, or he might have sub assembly stations where he would buy larger amounts from the sub stations into his main station.

Exam. Mullen: Your inspection regulations, do they require such eggs to be rehandled and repacked at that point?

The Witness: At the final point?

Exam. Mullen: At Sauk Center.

The Witness: Yes. We would not grade, or rather we wouldn't candle current receipt eggs.

Exam. Mullen: You require him to rehandle and repack them at that point, and then you inspect them, is that it?

The Witness: That is right. However, there might be an exception to that. If, for instance, the car consisted of 600 [fol. 352] cases of eggs, 400 cases could be rehandled and repacked at Sauk Center, and 200 might be rehandled and

repacked at his sub station and brought into the station to join the 400 cases. We would not object to that because we make our inspection on the basis of those eggs as they are at Sauk Center.

Exam. Mullen: That is all I have.

Commr. Mitchell: Is there further cross examination? That is all.

(Witness excused.)

ROBERT M. KLETT was sworn and testified as follows:

Direct examination.

By Mr. Krebill:

Q. Will you state your name and assignment, please?

A. Captain Robert M. Klett, Williamsburg Quartermaster Center, Veterinary Corps.

Q. What is your assignment at the Williamsburg installation?

A. Veterinary inspector for the Quartermaster Market Center of perishables and nonperishable subsistence received there by the army.

Q. Can you describe in some detail what your duties are there?

A. All types of product, both perishable and nonperishable, are brought into the warehouse in the car or truck, samples are drawn as the cars are unloaded for inspection purposes to see if they meet specifications. If not, the car is not unloaded, the purchasing office [fol. 353] is notified of our findings, and it is up to the purchasing and contracting department to make a decision upon our recommendations. If the carload passes our inspection, it is taken into the warehouse.

Q. Will you describe the inspection which you give a car or a truck—we will limit it to a car right now.

A. On any commodity, you mean?

Q. On eggs. A carload of eggs.

A. The seal on the car is broken and recorded, and an N.R.P.I.A. man and I will go through the car. I will draw a 30 case sample from this car, unloading a few

cases at the car door so that we can get inside the car, and then take one case from the top layer of the first row, one case from the second layer of the third row, going diagonally across the car until we have reached the opposite side, and then diagonally back and forth, taking one from each layer both ways through the car, and then that will give us approximately 20 cases. I will draw 10 more at random as we go through for our 30 case representative sample.

Q. How do you examine eggs out of the cases which you have withdrawn?

A. When this 30 case sample is withdrawn from the car, 20 cases are opened at rail siding, the lids are removed, and the R.P.I.A. man and I will make an inspection for railroad damage. When this is completed the 30 cases are then taken to the candling room where 100 [fol. 354] eggs from each case, as Major Snider stated before in his testimony are inspected. We draw our 100 eggs from each case in the same manner, recording them on our work sheets, totalling at the bottom, and if the car does not meet specifications, the figures are then telephoned or teletyped to the procuring market center where the procurement and contracting officer is, and he makes a decision upon our recommendations of the contract.

Q. What do you consider to be railroad damage?

A. Railroad damage is set up as leakers or checks. I mean, you are talking now on inspection of the 20 cases that I do with the R.P.I.A. man?

Q. Yes.

A. It is leakers and checks on top layer only, and broken.

Q. How can you identify it from origin damage?

A. In my own opinion a leaker that has been of any duration, the contents of the egg will be spread out over the flat and filler, and will be in a dried state, whereas if it is recent, it will not be dry and will not be so soaked into the flat and filler.

Q. Any other methods? Do you have any other way of telling which is railroad damage as distinguished from what might be origin damage?

A. No, sir.

Mr. Krebill: That completes the direct.

[fol. 355] Commr. Mitchell: Cross examination?

Cross examination.

By Mr. Knowlton:

Q. Do you have anything to do with the handling of claims?

A. No, sir.

Q. Do you get the origin reports?

A. I get a copy of the origin report, yes, sir, but this origin report does not show individual egg candling.

Q. You get part of the origin report then?

A. I get a report that Major Snider's men will put in the car, but it does not give me a complete breakdown of what he found.

Q. Do you make any recommendations that would be used in claims in any way, do you know?

A. No, sir.

Mr. Knowlton: That is all I have then.

Exam. Mullen: Captain Klett, how do you distinguish between checks you discover at destination and checks which might have been discovered at origin point?

The Witness: You are talking there on rail side inspection with the R.P.I.A. man?

Exam. Mullen: Yes.

The Witness: A check at this point would be very hard to detect because it would have to be a top layer, a top egg check, I mean, because the filler is not removed and you cannot see the side of the egg. Therefore, practically [fol. 356] stating, the only damage that I myself would be able to detect is top egg check or broken or leaker.

Exam. Mullen: That is to the checked eggs which you discover, would you know whether that was in existence when the car was shipped from the origin point?

The Witness: Not with the naked eye.

Exam. Mullen: How would you know that?

The Witness: The only way, an experienced man would be able to tell on candling.

Exam. Mullen: There was testimony here that a certain

tolerance in the grading of eggs and in classifying the eggs including checks, so it is possible, as I understand the testimony, that some eggs may be shipped from origin that are checked. I am interested to know how you would know whether those eggs which you say are checked occurred at destination or origin?

The Witness: A veterinarian at destination in the army is interested only in the procurement of the egg, and I have never tried to figure whether it was checked before or during shipment.

Exam. Mullen: You report just what you find?

The Witness: I report just what I see.

Redirect examination.

By Mr. Krebill:

Q. Do you reject a shipment because of checked eggs?

[fol. 357] A. On candling, we advise procurement and the contracting officer if it is in excess, and they make the rejection or acceptance. We make no rejections ourselves.

Mr. Reilly: May I ask a question?

Commr. Mitchell: Proceed.

Recross-examination.

By Mr. Reilly:

Q. Is your top layer inspection a typical inspection? In other words, do you do only a top layer inspection on all your egg inspections?

A. You mean for railroad?

Q. For railroad damage.

A. No, sir. If we find a carload that has shifted or in any other way shows that there is apparent damage there, then we will segregate those cases, not necessarily take all of them because we are—I mean, I am just as fair as the next man. However, if I run into a place I might take one there, and the next time I might not even take one there.

Q. Ordinarily, though, you are satisfied with the top layer inspection?

A. That is right.

Q. In your opinion is such an inspection an adequate inspection?

A. For apparent damage.

Mr. Reilly: Thank you, Captain.

Exam. Mullen: May I ask one question? Do the railroads pay damage at New York on eggs that are found to be [fol. 358] checked on inspection?

Mr. Knowlton: Mr. Jensen would be the one to answer that.

Commr. Mitchell: Is that all with the Captain?

Mr. Matson: I have one question.

By Mr. Matson:

Q. Going back to this railroad damage, if you find in opening the top of the case that six eggs up against the end of the case or against the middle partition are cracked, is that evidence to you that the damage was railroad damage?

A. In my opinion, after candling further, I would have to recommend to headquarters that it is apparently railroad damage.

Mr. Matson: Thank you. That is all.

Commr. Mitchell: Thank you, Captain. That is all.

(Witness excused.)

Commr. Mitchell: Do you have any more witnesses?

Mr. Krebill: I have no more witnesses.

Commr. Mitchell: Mr. Jensen, Examiner Mullen would like to ask you one question.

WALTER S. JENSEN was recalled to the stand and testified further as follows:

Exam. Mullen. I want to know if the railroads in New York pay damage claims on eggs that are discovered to be checked on inspection at New York?

The Witness: Not only at New York, but all other points.

Exam. Mullen: That is an element of the damages which [fol. 359] you pay?

The Witness: That is right.

Commr. Mitchell: If on inspection you find checked eggs in the crate, does that give the consignee a right to go through the entire car then?

The Witness: On top layer inspection of the first 20 cases?

Commr. Mitchell: Yes.

The Witness: Yes.

Commr. Mitchell: One egg checked?

The Witness: A check is a crack in the shell that does not affect its membrane. It is a fracture of the shell of the egg.

Commr. Mitchell: If there is one egg checked in the crate, they have a right to entire inspection of the whole car, is that right?

The Witness: Technically that is correct, yes, and it is used by some kinds of receivers, too.

Mr. Blanchard: May I ask the witness a question? Is it a measure of damage in the case of a checked egg the same as a broken egg?

The Witness: You mean the amount of money lost?

Mr. Blanchard: Yes.

The Witness: No.

Mr. Blanchard: How about a stained egg?

The Witness: Even less.

Mr. Blanchard: You have market quotations on checked [fol. 360] eggs by the case, do you not?

The Witness: That is right.

Mr. Blanchard: You have market quotations on stained eggs by the case?

The Witness: I don't know whether they call them stained or dirties.

Mr. Blanchard: Stained and dirty are usually mixed, aren't they?

The Witness: Not every day, of course.

Mr. Blanchard: In the case of dirties, stains or checks, your measure of damage, the difference between the market value of the egg that was checked and the market value of the checked or stained or dirty egg in New York on the same day?

The Witness: You are talking about market quotations?

Mr. Blanchard: Yes.

The Witness: That is right.

Mr. Blanchard: That is all.

Commr. Mitchell: As I understand it, Mr. Jensen, if on this 20 case inspection you find the consignee, or the consignee finds a checked egg, you then have a right to inspection of the whole car, and he can designate the cases that he wants to inspect, isn't that right?

The Witness: Not exactly. If he finds that one checked egg in one of the 20 cases, then it is up to him to decide whether or not he wants to lift the lids on the rest of the [fol. 361] shipment or lot. He does it. We don't do it.

Commr. Mitchell: No, but he can designate a hundred cases in that car, if he wants to?

The Witness: If he designates that 100 without looking at them, there is no business. He has to say that there is damage in those hundred cases and then we look at them and if there is no damage, those are good order cases.

Commr. Mitchell: I know, but if he finds one checked egg in each case, he can get you to pay 40 cents for repacking the case, can't he?

The Witness: That is right, if he chooses the case agreement method. On a 60 cent market, that one checked or broken egg is worth 45 cents, the claim value of that one egg.

Commr. Mitchell: Have you figures as to what it costs you, how much you spent, say, during the last year on repacking of eggs on the 40 cent basis allowed to the consignee? Would your records show that?

The Witness: We can develop that, yes.

Commr. Mitchell: Is it a substantial amount?

The Witness: They have been going away from the 40 cents a case proposition because labor charges are higher when they work on a direct labor material basis, man hour basis.

Commr. Mitchell: We would appreciate it if you would consider that. Maybe you could develop that when you get to New York as to what that amount runs.

[fol. 362] (Witness excused.)

Commr. Mitchell: Is there any other party that desires to offer any witnesses at this time?

Mr. Staley: Mr. Commissioner, on behalf of Swift & Company, I will have evidence to introduce, although not at this particular hearing. That is, we are not prepared at this time. I assume we will have an opportunity to put that in?

Commr. Mitchell: I want all parties to understand we will accept any witnesses or any evidence you may desire to offer at New York. That will probably be our only hearing, Mr. Staley, so if you desire to produce evidence that would probably be the place to do it.

Mr. Blanchard: We will desire to present our case there, too.

Commr. Mitchell: Mr. Jones, has the Association any witnesses to offer at this time?

Mr. Jones: Not at this time.

Commr. Mitchell: You also will have the right and privilege to offer whatever evidence you desire at New York.

Mr. Jones: Thank you, sir.

Mr. Blanchard: May we leave the record for a moment?

Commr. Mitchell: Off the record.

(Discussion off the record.)

Commr. Mitchell: On the record.

Is there any other suggestion?

[fol. 363] Mr. Matson: Mr. Commissioner, I would like to make a request that Exhibit No. 15 of Witness Piehl be supplemented to show the condition of the cars shown in that exhibit when they arrived at destination, and also to show the number of claims filed on those particular cars, and the amounts of the claims.

Mr. McDonald: We will be glad to do that.

Commr. Mitchell: Can you do that?

Mr. McDonald: We think so.

Mr. Knowlton: I don't know that we can do it completely, but we can try. In fact, we have already issued instructions to try to do it after yesterday's hearings.

Commr. Mitchell: Furnish whatever you can with regard to the request.

Mr. Matson: I assume that would include a showing of the number of stains, checked and leakers, and the amount of the damage.

Mr. Knowlton: It will be what is on the inspection report, and that normally would be on. We are going to try, and we have already issued instructions to prepare it. While we didn't want to promise it, we did want the information.

Mr. Matson: That will be fine. Thank you very much.

Commr. Mitchell: Is there any other party who has anything to offer at this time?

Thank you, gentlemen, for your many courtesies extended to Mr. Mullen and myself.

[fols. 364-367a] We will proceed to New York. We have but one desire in mind, of course, and that is to see if we can't remedy a condition which seems to us should be remedied. That is our sole purpose in this investigation, to help the shippers and to see that the railroads receive fair compensation for hauling eggs.

* * * * * * * *

[fol. 368] PROCEEDINGS—December 15, 1949

Comr. Mitchell: The hearing will come to order, please.

In compliance with the order of the Interstate Commerce Commission, Division 2, entered on the 23rd day of July, 1948, in case No. 30030, Special Regulations—Eggs, this proceeding is assigned for further hearing on December 15, 1949, at 9:30 a.m., at the Hotel St. George, Clark Street, Brooklyn, New York.

We have had a great many appearances entered in this case, and those who have already entered their appearance are not required to enter it again. If there are any present who have not entered their appearance we will be glad to have them enter their appearance at this time.

Mr. McLean: Harold H. McLean, 466 Lexington Avenue, New York 17, N. Y., appearing for Eastern Railroads.

Comr. Mitchell: Is there anyone else?

Mr. Benjamin: Commissioner, I wish to make a statement. My name is Earl W. Benjamin, and my address is

11 Park Place, New York, N. Y. I am Executive Representative of the Washington Coop. Farmers Association of Seattle, Washington, one of the members of the Pacific Dairy and Poultry Association, 1304 East Seventh Street, Los Angeles, California.

I have been requested by the Pacific Dairy & Poultry Associations to represent them on this occasion, to present their plea that a further hearing on I.C.C. Docket No. [fol. 369] 30030, Special Regulations—Eggs, be held at some point on the Pacific Coast, unless the tolerance requested by the railroads, a subject of this Docket, is completely denied by the I.C.C. following this hearing of today.

I hereby most earnestly present their reasons for this plea, as follows:

1. Practically all the important shippers and receivers of eggs in the States of Arizona, California, Idaho, Montana, Nevada, Oregon, Utah and Washington are members of the Pacific Dairy and Poultry Association. The volume done by these members is substantial. Receipts at three of the markets on the Coast, Los Angeles, San Francisco and Portland during the years 1947 and 1948 averaged 2,825,684 30-dozen cases of eggs each year. Shipments from States east of the Rocky Mountains to Pacific Coast States during the last six months of 1948 alone, amounted to 1,000 carlots. Further facts as to the volume of production and movement of eggs in the Pacific Coast states will be presented later in the course of this hearing.

The shippers and receivers on the Pacific Coast are deeply concerned in the matters covered in Docket No. 30030.

2. These shippers *and* receivers could not leave their businesses and entail the costs involved, to be present at the hearing on this Docket in Chicago July 26 and 27, 1949. It is likewise impossible for them to attend this hearing today. They believe that the I.C.C. does not wish to deprive them of the opportunity to appear in person to present pertinent facts relating to the important subject of this Docket. They [fol. 370] desire to be of what aid they can, to the I.C.C., in arriving at a fair and reasonable decision on this matter.

3. The Pacific Dairy and Poultry Association has care-

fully surveyed its membership and believes that shippers and receivers representing a substantial part of the total volume of movement concerned, there, would attend a hearing on the Pacific Coast, and present testimony of value. The many communications which have come to your office and that of Secretary Bartel of the I.C.C. with regard to this matter, serve as further evidence of their deep concern in this matter.

4. I hereby petition you, Commissioner Mitchell, to grant the request of this important segment of our industry, on the Pacific Coast, for a hearing on Docket No. 30030, at a suitable time and place, in that area, unless the plea of the railroads is previously denied as aforesaid.

Most respectfully submitted.

Mr. Matson: The Department of Agriculture would like to support the request made by Mr. Benjamin for a West Coast hearing, for the reasons stated by Mr. Benjamin, and in addition to that, I have a letter from the Dupraw Public Service Commission expressing interest in the case and that they desire a further hearing in the west.

Commr. Mitchell: It is, of course, the desire of the Commission that everyone that has an interest in this case should be heard.

[fol. 371] I did not think, in the beginning, that it was necessary to hold a hearing on the West Coast. But apparently there is a demand for it.

This hearing, of course, will not result in a ruling upon this case today. This is a Division 2 case and it will have to be submitted to them, and unfortunately the report we have here is that we have not made the progress in this case that we should have made. The claims in New York are still outrageous, and as far as I am concerned the Commission will continue this investigation until we find out what is the reason for these terrific claims.

As to whether we will hold a hearing upon the West Coast, I will not rule on that matter now, but it will be submitted to the Commission.

This case will be continued after today, for further hearing, to be determined by the Commission.

We are glad to have your statement, Mr. Benjamin.

Are there any other parties that desire to make statements or appearances at this time?

(No response.)

Do the railroads have any further evidence they desire to offer at this time?

Mr. Knowlton: We do. We have two witnesses, I would like to recall Mr. Jensen.

Commr. Mitchell: I think we will have Mr. Murphy put [fol. 372] in a statement that he has, before we recall Mr. Jensen.

Edward L. Murphy was sworn and testified as follows:

Direct examination.

Commr. Mitchell: You may give your name and occupation, Mr. Murphy.

The Witness: Edward L. Murphy, Special Agent, Bureau of Inquiry, Interstate Commerce Commission, 90 Church Street, New York, N. Y.

I have prepared a comparison of the shell egg rail shipments delivered, and the loss and damage claims at New York, N. Y., during the first ten months of 1948 and 1949.

Commr. Mitchell: Will you mark this Commission's Exhibit No. 27?

(Commission's Exhibit No. 27, Witness Murphy, marked for identification.)

Commr. Mitchell: There has been marked as Commission's Exhibit No. 27, introduced by the witness Murphy on behalf of the Commission, a one-page statement, Comparison of Shell Egg Rail Shipments Delivered and Loss & Damage Claims at New York, N. Y., During First 10 Months of 1948-1949.

Is there objection to the offer of the exhibit?

Mr. Knowlton: We have no objection.

Commr. Mitchell: There being no objection, the exhibit will be admitted.

[fol. 373] (Commission's Exhibit No. 27, Witness Murphy, received in evidence.)

By Commr. Mitchell:

Q. Go ahead, Mr. Murphy.

A. As the exhibit indicates, during the first ten months of 1948 there were delivered by rail at New York 3,204,027 cases of eggs, which at the rate of 600 cases per car is the equivalent of 5,341 car loads.

During that same period of time, 3,808 loss and damage claims were approved by the Railroad Perishable Inspection Agency, the total amount of which was $871,441.51.

During the same period of 1949, 1,273,922 cases of eggs were received by rail at New York, which at the rate of 450 cases per car is the equivalent of 2,828 car loads.

During the first ten months of 1949 2,072 loss and damage claims were approved by the RPIA, totaling $491,542.61.

The average amount per claim handled in 1948 was $163.16, and in 1949 the amount had increased to $178.81.

The average amount per claim in 1948 was $228.84, which increased in 1949 to $237.23.

It will be noticed that in my computation of the number of cars I used a figure of 600 cases per car in 1948 and 450 cases in 1949. That probably requires some explanation.

During 1948, or at least during the best part of it, the ODT Loading Order set a carload of eggs at 600 cases. Because of the fact that that order was in existence during [fol. 374] most of the period, I used that figure.

However, during the ten months in 1949, the order was cancelled, and I believe that 450 cases is a fair average figure for the load per car.

That is all.

Commr. Mitchell: Cross examination.

Cross examination.

By Mr. Knowlton:

Q. Mr. Murphy, the column C is not loss and damage claims that correspond exactly with columns A and B, I see. In other words, they are not the claims filed on those cars?

A. Not on a car-for-car basis, no.

Q. In other words, your exhibit would really be more understandable if you drew a line down between Columns B and C to show that they were not tied in?

A. Perhaps.

Q. Well, isn't that so?

A. I think it is clear enough if I say, for instance, in January there were 508 claims. I do not say in the statement or here now that those claims occurred on any of the 741 cars. They are merely the number of claims that passed through the RPIA in that month. They probably were and could very well have been in the 1947 claims.

Q. I think that makes it clear.

Now, from your exhibit can you attribute anything in the [fol. 375] claim practices, inasmuch as you show that claims have increased, that would indicate a reason why the traffic dropped off?

A. I do not understand the question.

Q. You are not drawing any conclusion from this exhibit as to the claim practices of the railroads, affecting the falling off of traffic, are you?

A. No, I am merely stating it as a fact.

Q. Could you draw any conclusion from your exhibit on that?

A. I would not care to. I would prefer to have the figure speak for itself.

Q. In other words, the fact that you show that the claims have increased is not indicative of any reason why the traffic fell off?

A. I do not know what the reason is, frankly.

Mr. Knowlton: That is all.

Commr. Mitchell: Is there any further cross examination?

Mr. Blanchard: Yes, sir.

By Mr. Blanchard:

Q. Have you the data from which you could determine how many of these claims arose on cars that were subject to floating service, and how many do not?

A. No, sir, I do not have that break down.

Mr. Blanchard: That is all.
Mr. McDonald: I have one question, Commissioner.

By Mr. McDonald:

Q. Mr. Murphy, do these loss and damage claim figures, shown under column C, represent the amount of claims [fol. 376] as they were filed with the carriers, or do they represent actual claims payments?

A. They represent the amounts approved by the Railroad Perishable Inspection Agency.

Mr. McDonald: Thank you.
Commr. Mitchell: Any further cross examination?

(No response.)

Examination.

By the Commissioner:

Q. Well now, as I understand this, Mr. Murphy, you show the average amount of claims per car handled in 1948 was $163.16. That is right, isn't it?

A. That is right.

Q. But that was on the basis of 600 cases to the car?

A. That is correct.

Q. While, in 1949, the average amount of claims per car handled was $173.81. That is on a basis of 450 cases to the car?

A. That is correct.

Q. So in comparison with the revenue received by the railroads, the amount per car has increased very materially over 1948?

A. That is right.

Commr. Mitchell: That is all.
Is there any further cross examination?

(No response.)

That is all, Mr. Murphy, thank you.

(Witness excused.)

[fol. 377] Commr. Mitchell: Now, Mr. Jensen, will you take the witness stand?

WALTER S. JENSEN, having been previously sworn, testified further as follows:

Commr. Mitchell: Give your name to the reporter.

The Witness: My name is Walter S. Jensen, and I am Manager of the Railroad Perishable Inspection Agency.

Direct examination.

By Mr. Knowlton:

Q. Go ahead, Mr. Jensen.

A. I am going to read a prepared statement.

At the July hearing on this case at Chicago certain information was requested in respect to the egg inspection personnel of the RPIA and the number of points in the New York City Metropolitan Area where shell eggs are inspected by the RPIA.

During the first eleven months of 1949 the RPIA inspected shell eggs at 40 points in the New York City Metropolitan Area. Inspectors were regularly assigned to 15 of these points and were in daily contact with the situation. At the other 25 points inspections were made on the call basis.

During most of 1949 the RPIA had 19 egg inspectors on duty in the New York City Metropolitan Area. These inspectors have been in this work from four to 30 years. Their ages range from 31 to 68. The monthly salary of each and every inspector is $297.40.

I was also asked to furnish information relative to the [fol. 378] number of egg inspectors for the years 1944 to 1949, inclusive. 19 inspectors have been in service for the inspection of eggs throughout this period.

Damage in Relation to Claims

In order to determine the potential effect of the application of the 5% rule as set forth in Supplement No. 20 of the Consolidated Freight Classification effective July 24th, 1948; we analyzed the claim experience records on a representative number of cars of shell eggs unloaded at New York during 1947. This representative number was arrived at by determining the percentage of total claims paid on 1947 deliveries in New York for each delivering

carrier. This percentage was then applied to the number of claims desired for this study. Then the number for each delivering carrier was divided by 12 to get an equal number of claims for each month's deliveries in 1947. We used 1947 deliveries as a base because the elapsed time makes the final claim experience available in connection with the actual damage in the cars involved. The pertinent data of this analysis are as follows:

Number of claim cars—263.

Amount paid in claims on these cars—$64,738.65.

The amount that would have been payable if the above mentioned Supplement No. 2 had been applicable to these claims—$38,659.90.

Potential reduction—$26,078.75, which is the equivalent [fol. 379] of a reduction of 40.28%.

1949 Damage—New York

For the first eleven months of 1949, 2,565 cars of eggs were inspected by the RPIA in the New York Metropolitan Area. These cars contained a total of 1,111,963 cases of eggs. 1,021 or 39.8% of these cars were accepted by the consignees as "good order". 253,982 cases contained damage of record in the 1,544 cars delivered in bad order. 887,432 dozens of eggs were recorded as damaged in these 253,982 cases. A very significant feature of this damage of record, is that, of the 253,982 cases which contained damaged eggs only 43,005 cases showed any external evidence that they contained any damaged eggs. 82.8% of the cases which contained damaged eggs of record bore no outside evidence of damage to their contents and, in that respect, these cases arrived in New York in the same apparent condition as when received and loaded in the car at the rail points of origin. The percentage relationship of the number of cases bearing no outward evidence of damage in respect to the total number of cases with damage of record remains fairly constant. In 1947 this percentage was 79.8%; in 1948 83.8%; and for the first eleven months of 1949 82.8%.

1949—Claims on Cars Inspected in January 1949 in the New York Metropolitan Area

In our further study of the relationship of damage to claim experience we have chosen the latest month (Janu-[fol. 380] ary 1949) for which complete claim data would be available under the nine months provision of the bill-of-lading. The pertinent statistics for this month are as follows:

Total number of cars inspected by the RPIA—355.
Cars delivered without exceptions—180 or 50.7%.
Cars delivered with exceptions—175 or 49.3%.
Number of cases billed—(355 cars)—172,396 cases.
Number of cases containing damage—20,809 cases.
Number of dozens damaged—75,974 dozen.
Number of these damaged cases which showed no outward evidence of damage—17,027 cases which is 81.8% of number of cases containing damage.

We have record of 169 claims totaling $30,544.65 filed on the cars delivered with exceptions.

Claims on the other six cars with exceptions, may have been properly filed but have not yet reached us as of this date.

In our analysis of these 169 claims we found that 56, totaling $5,863.53 were on eggs identified as "Graded" and were subject to the 5% rule effective July 24th, 1948. 107 other claims totaling $23,467.97 involve cars containing eggs which after investigation were identified as "Rehandled and Repacked" eggs and, therefore, not subject to the 5% rule. Six other claims totaling $1,213.15 involve cars of eggs in which part of the shipment was subject to the 5% rule, the balance being identified as "Rehandled and Repacked."

[fol. 381] We have applied the 5% breakage rule to the 62 claims to the extent applicable in accordance with Supplement No. 2 of July 24, 1948. The total payment of these 62 claims was $7,076.68 which constitutes a reduction of $2,745.78, or 38.8% of the total amount for which these claims were filed. The methods of determining damage, identifying damage, and the inspection at destination were the same for January, 1949, as just prior to

the effective date of Supplement No. 2. Therefore, the only tangible improvement in the egg claim payment situation at New York is identified with the effects of Supplement No. 2.

Loss Items of Egg Claims

A claim for loss account of damage to shell eggs is made up of several items. First, the loss incident to the damage itself; second, labor charges incidental to reconditioning the cases containing verified damage; third, the materials used in this reconditioning process; and fourth, the applicable warehouse charges covering the extra expense of handling cases containing damage.

In an analysis of 150 claims (picked currently as filed) we found that of the total amount claimed, namely, $48,791.74, the portion allocated to damage to the eggs was $33,575.91, or 69%; the amount chargeable to labor was $12,494.45, or 26%; to material $2,280.32, or 4.5%; to warehouse charges $259.38, or ½ of one per cent.

[fol. 382] Research to Prevent Damage

The most effective way of improving the claim payment situation on eggs is to develop ways and means of reducing the damage itself. Since 1946 the RPIA has been engaged in the identification of damage, study of possible causes, and development of ways and means of eliminating damage. Through destination inspection we located the shipping points from which damage consistently developed, and when those points were in our own territory we sent inspectors to those shipping points to develop essential information. We found some shell damage to the eggs at every point where we made inspections at the time the cases were placed in the car. We made test loadings of every known method of loading, and we devised and tried out other ideas. We tried loading without any buffing material to take up lengthwise slack; we loaded extra tight with buffing at one or both ends and the middle of the car to take up lengthwise slack; we placed the cases in the car crosswise and lengthwise, and in combination; we used glue to hold the cases together so that they would be in one solid unit using an adhesive

which held the cases from moving lengthwise of the car but which released the cases from each other in the ordinary process of unloading at destination. We tried the paper tie-down method which consists of the use of heavy paper woven in between layers and stacks to unitize the load into blocks to prevent movement of individual cases. We arranged to secure a number of so-called [fol. 383] "sponge rubber blankets" large enough to cover half of each bunker wall of the car to provide a resilient cushion against which the load could move with a minimum of shock. We are now in process of securing for an interested shipper a supply of expendable excelsior cushion pads of a new type for use in the same manner as these rubber cushions were used because it proved impracticable to get rubber cushions back to egg loading points for reuse. We have made rather intensive studies of the damage experience with the various types of fibre and wood cases.

When in the course of our destination inspection we find damage which may be chargeable to some defect in the car body itself, we have developed the practice of notifying the owner of that car and the delivering carrier so that it would be sent to shop for repair before that car went back into transportation service.

To determine the relative merits of these various ideas and methods of loading we have followed the practice of inspecting a representative number of cases at the time they are loaded in the car, marking those cases, and have the same inspector examine the same cases, at New York during the process of unloading and delivery. We have not found any practical method of loading which materially reduced the destination damage of record.

Indiana

[fol. 384] The Indiana egg producing area was the only point in RPIA territory from which carload rail shipments of eggs originated. We were making some progress in the prevention of damage in cars from that territory because we could cover both origin and destination conditions with our own inspection research, but this opportunity terminated shortly after Supplement No. 2 became

effective July 24th, 1948, because the shippers decided to ship their eggs to New York over the highways rather than on the railroads.

Iowa and Minnesota

In 1949 practically every car of eggs unloaded at New York originated at points beyond RPLA territory, that is, Chicago and west. Therefore to arouse the interest of shipper, carriers and any others that might be concerned in the prevention of damage to eggs on their way from producer to destination markets we extended our special report system to cover all cars inspected so that interested carriers and shippers would know the amount of damage of record in their own cars. We included in these reports our suggestions relative to improvements in loading practices which we believed might influence the outturn of damage. In these endeavors we have had the active cooperation of the Western Weighing and Inspection Bureau through their inspection operations at various points in Iowa and Minnesota.

However, in spite of all these efforts there has been very [fol. 385] little material improvement in the outturn check of damage at New York City where the privileges extended to the consignee by the present tariff are exercised.

There will be very little improvement in the egg claim payment situation until reasonable normal expectancies of damage are recognized and authorized for application in the adjustment of every claim for shell egg damage.

Commr. Mitchell: Will you explain that? What do you mean by that statement?

The Witness: That a certain amount of damage is inescapable in the transportation of eggs from one place to another. We call that normal expectancy of damage.

Commr. Mitchell: All right. Go ahead.

A. (Continuing) These normal expectancies should include both the normal damage that exists at the time the eggs are loaded in the car at rail point of origin and the normal damage which occurs in transportation from that point to the rail destination and that these expectancies should be based on the known fragile nature of shell eggs.

A recent test (which we observed) made by the USDA

indicates that the cells of the standard size filler are too small. In this test shipment the eggs packed in the cases which were equipped with fillers having cells 1/32 of an inch wider both ways than the standard filler showed sixty-four-hundredths of one percent shell damage in rail transportation from point of origin to destination [fol. 386] whereas other eggs of the same type and size packed in cases with standard size filler cells showed 1.59% damage occurring in rail transportation from point of origin to destination in the same car.

It is apparent that any further reduction in claim payments for destination shell damage would have to be predicated on the following:

(1) More general application of normal expectancies of damage to all eggs.

(2) Reduction of damage through more efficient methods of packing eggs in egg cases, such as, larger cells in the fillers for the eggs.

By Mr. Knowlton:

Q. Is that all you have, Mr. Jensen?
A. That is all.

Mr. Knowlton: All right, cross examine.
Commr. Mitchell: Cross examination.

Cross-examination.

By Mr. Blanchard:

Q. Mr. Jensen, I am interested in this "normal expectancy". What do you mean by that; normal expectancy of eggs arriving at the New York market, or eggs arriving anywhere in the United States?

A. Arriving anywhere in the United States.

Q. Is it your contention that these figures which you have shown as to conditions of eggs arriving in New York are typical of eggs arriving in Baltimore, Boston, [fol. 387] Philadelphia, or any other city?

A. Are you talking about actual damage, or damage of record?

Q. Actual damage.

A. I think that for comparable eggs, size, and so on, yes.

Q. Is it your belief that the normal expectancy of shipments of eggs arriving in New York is the same with eggs arriving at small points, such as Batavia, Elmira, New Haven; points like that?

A. I think so.

Q. Have you made any study of these other points to determine whether the figures you developed at New York are representative of those points or not?

A. We would not know of that damage because it is already recognized by the consignees at many points as a normal expectancy, and no objections are taken, no exceptions.

Q. Then your statement about your knowledge of damage in small country points like Batavia or Mt. Vernon is made without any basis for comparing the actual results of shipments to such points with shipments to New York, isn't it?

A. You mean Mt. Vernon, New York, I suppose; suburb of New York City?

Q. Yes.

A. I think we have never been called up there for an inspection of eggs. But I am talking now of places where we do have knowledge of the attitude of consignees, in one place or another.

[fol. 388] Q. You mean you never get a claim in these so-called small destinations for damage to eggs?

A. That is practically correct.

Q. Then is it because the receivers at those points are careless in their duties and overlook claims for eggs, or because there is no such claim?

A. I think they recognize the fact of the principle of normal expectancy in their acceptance of the shipment.

Q. Then your difference is a difference of attitude between the receiver of eggs in New York and the receiver of eggs elsewhere; is that it?

A. It could very well be, yes.

Q. If it should appear from this record that to every place in the eastern area except New York four out of every five, or often eight out of every ten cars of eggs received

are received without damage, would you say that your picture as to New York was representative of the egg traffic as a whole?

A. If that should ever be the record I would challenge the record as being inaccurate, to start off with.

Commr. Mitchell: He is assuming that record.

You are not claiming that this record shows that?

Mr. Blanchard: Oh, no.

Commr. Mitchell: That is a hypothetical question, then.

By Mr. Blanchard:

Q. If it should appear on this record, by subsequent testimony, that to metropolitan areas other than New York [fol. 389] the cars arriving without damage were much greater in total proportion than in New York, and if it should appear that to the smaller towns, such as Elmira, Albany, Troy, the percentage of cars damaged was still less, would you say that the study you have made of the situation in New York was representative of any other point in that state?

A. In the first place, in the face of all those records——

Commr. Mitchell: You would have to assume that, Mr. Jensen. He puts that in the question. If what he says is not true, then of course that is a different story.

Mr. Knowlton: May I clarify that?

When Mr. Blanchard used the term "damaged" and referred to New York, did he mean damage claims, or the eggs?

Mr. Blanchard: I refer to the eggs.

A. You are talking about damage of record. Damage of record is the damage which the consignee takes exception to and which is verified by us in the course of our inspection. There is a very distinct difference between a carload of eggs without damage and a carload delivered in good order or without exceptions. I have never heard of a car of eggs arriving at any destination——

Commr. Mitchell: Well now, you are to answer the question the attorney asked you rather than make a speech about something else.

Are you able to answer the question which he asked you? [fol. 390] If you are not, say so.

The Witness: I cannot answer that question.

Commr. Mitchell: Ask another question.

By Mr. Blanchard:

Q. Is your conclusion as to using larger fillers based on your investigation as to the egg situation in New York, or have you considered the effect of that condition at other destinations as well?

A. We are discussing New York only. All these conclusions are based on our observations and study of New York.

Mr. Blanchard: That is all.

Commr. Mitchell: Is there any further cross examination?

Mr. Knowlton: Just a minute. I do not think the witness understood that question.

You mean to say that that test was made at New York?

The Witness: Oh, no.

Mr. Knowlton: Where was it made?

The Witness: It was at Philadelphia arrival.

Mr. Knowlton: I think that is the answer, that we are not confining it to New York.

Mr. Blanchard: I am willing to take the answer of the witness as he gave it.

Mr. Knowlton: He misunderstood it.

Commr. Mitchell: Stop the argument.

By Mr. Matson:

Q. Mr. Jensen, further in respect to this test, was a release issued by the Department or not?

[fol. 391] A. No official release as yet. We were there and saw the inspection.

Q. And that was a single test; just one test?

A. That is right.

Q. Is this conclusion stated in your testimony your conclusion or the conclusion by the Department?

A. My own conclusion.

Q. Now, since the Chicago hearing, have you found out

any more about this claim racket that the railroads allege exists in New York?

A. What do you mean by "claim racket"?

Q. You know very well what I mean. I am merely using your own words.

A. No, sir, you are not using my words. The claim situation is just the same and it continues the same as it was before.

Q. You found no dishonesty in New York?

A. I am not a detective. As far as I know, the answer to that is no.

Q. No? You have found none?

A. We have found no dishonesty.

Mr. Matson: That is all, thank you.

Commr. Mitchell: Any further cross examination?

By Mr. Staley:

Q. If we go to the docks and examine a carload of eggs over here and see the cases all smashed up and the egg meats running out of the cases, does that come under your [fol. 302] description of normal expectancy?

A. No, sir.

Q. You testified that there is a high percentage, close to 80 per cent of the cases that have damage, where there is no visible evidence of damage, is that right?

A. That is right.

Q. That is here at New York?

A. Yes.

Q. Are you familiar with the other exhibits in the case, particularly Exhibit No. 11, put in by Mr. Hodkinson, which shows that while the percentage of claim cars here at New York is 66 per cent of all cars of eggs coming in, Baltimore, for instance, has only 16½ per cent of all cars that come in?

A. Yes, sir, I am familiar with that.

Q. Do you know whether or not the percentage of cases that have damaged eggs in them, that come into Baltimore, that bear no external evidence of damage, is any different than it is at New York?

A. No, we do not know. I do not know.

Q. Don't you know that it is very simple——

Commr. Mitchell: He answered that he did not know. What are you going to ask him about, Mr. Staley?

Mr. Staley: That ends what I was going to ask him about on that. He does not know.

Commr. Mitchell: Go ahead. Ask him another question.

By Mr. Staley:

Q. If it should develop that claims filed in transportation [fol. 393] by truck, by certain shippers was substantially less than by rail, would you say that the normal expectancy is any different?

A. I do not know anything about truck transportation of eggs.

Mr. Staley: I believe that is all.

Commr. Mitchell: Any further cross examination?

(No response.)

Examination by the Commissioner.

By Commr. Mitchell:

Q. Mr. Jensen, were you the one who testified at Chicago that the percentage of total revenue received by the railroads in shipping shell eggs into New York, paid in claims, was 50. something?

A. No, sir.

Mr. Knowlton: That is the next witness, Mr. Commissioner.

Q. You are familiar with this exhibit introduced by Witness Murphy to the Commission?

A. Yes, sir.

Q. We have not made any progress as far as New York is concerned, have we?

A. Yes, sir, we have.

Q. The claims were higher this year than they were last year?

A. Using this statement as a base, that would be indicated, yes.

Q. What is your progress, then?

A. I mentioned it here, in one part of my statement; that the application of this 5 per cent rule produced a reduction [fol. 394] of the claims payments on January cars, amounting to——

Q. January of what year; 1949?

A. 1949.

Q. It is a matter of fact, is it not, that the claims which the railroad paid for the first ten months of 1949 were higher per car than they were for 1948?

A. If you were to use the claims filed, without regard to the time that the eggs moved, which of course is the only index of progress, that might be true as reflected by Mr. Murphy's statement. But using January, which is the latest month for which we would have complete claim information, the other is true—the 5 per cent rule did improve the claim situation. That is the only thing that has improved the claim situation.

Q. Do you think the railroads can handle shell eggs into New York, charging the rates now charged, at a profit to the railroad?

A. I could not answer that question.

Q. From listening to your testimony, the railroads have made no progress in the matter of packing or handling the eggs into New York that is going to reduce the claims, have they?

A. I think that is essentially true. We have not found the answer at all.

Q. The only progress that you say has been made is the fact that this 5 per cent tolerance rule has been in effect?

A. From the freight claim standpoint, yes.

[fol. 395] Q. You have worked on this now for three years?

A. Four years. I am just finishing the fourth year right now.

Q. And in those four years the railroads have made no progress toward reducing the claims through packing and shipping into New York City?

A. I do not know whether you can put that all with the railroads. You might say that the railroads and the shippers have found no way.

Q. Well, there has been no progress made then, is that it?
A. Practically, yes.

Commr. Mitchell: Your next witness is going to have the information about the amount of revenue and the percentages?

Mr. Knowlton: Yes, sir.

Commr. Mitchell: That is all, Mr. Jensen.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Knowlton: I call Mr. Hodkinson.

E. A. Hodkinson was sworn and testified as follows:

Direct examination.

By Mr. Knowlton:

Q. Mr. Hodkinson, I believe you have a short exhibit.

Mr. Knowlton: May this exhibit be identified as No. 28?

Commr. Mitchell: It will be marked, mark it Exhibit No. 28, Witness Hodkinson.

[fol. 396] (Respondent's Exhibit 28, Witness Hodkinson, marked for identification.)

Commr. Mitchell: Is there objection to the offer of the exhibit?

(No response.)

Commr. Mitchell: There being no objection, it will be admitted.

(Respondent's Exhibit No. 28, Witness Hodkinson, received in evidence.)

By Mr. Knowlton:

Q. I am going to ask you to proceed in your own way, Mr. Hodkinson, with the information that you have already had in the form of questions from Commissioner Mitchell

on certain matters that he would like to have you explore. I imagine he will reiterate the questions, and then in conclusion submit this Exhibit No. 28, which is a proposed draft for a change in the tariff, Note 5, concerning eggs.

Mr. Knowlton: You understand, Mr. Commissioner, that Mr. Jensen's testimony indicates that the only progress has been in the change in the tariff made in 1948.

We had contemplated another tariff change, but the carriers were not all in agreement as to how that should be proposed, and some of them felt that it should be proposed in the hearing, and we are therefore today going to propose a step on which we would like to have an interim order to permit us to make the change and try it out immediately.

[fol. 397] By Mr. Knowlton:

Q. (Continuing) Now will you proceed, Mr. Hodkinson?

A. We have been giving considerable study to the steps that should be taken to reduce the large number of egg claims and the large amount of money that we have been expending in the settlement of those claims. We have been in constant touch with the freight claim agents and with the Railroad Perishable Inspection Agency, and the only improvement that we have been able to locate in the claim situation is, as Mr. Jensen has told you,—the only improvement can be attributable absolutely to the 5 per cent tolerance now published to apply on a small segment of the total egg traffic.

We are convinced that the only salvation is in having a normal expectancy applied to every single shipment of eggs delivered by the railroads, and with that objective in view we have redrafted Note 5 of the official classification which carries the rules pertaining to the descriptions, inspection and delivery of eggs.

We have provided for two expectancies or tolerances. The first one appears in Section 6, where we provide that, "No claim should be allowed where the physical damage to the eggs at destination does not exceed 4 per cent of the contents of the package."

That 4 per cent is made up of the normal expectancy of 3

per cent at the point of origin and one per cent to cover the [fol. 398] line haul movement of the eggs.

However, there is an exception in connection with that rule which permits the shipper of eggs to obtain a federal or state egg inspection certificate, and if that certificate shows less than 3 per cent we would apply that percent in the settlement of the claims, adding to it the one per cent for the line haul normal expectancy.

Section 7 covers eggs that are not loaded at the rail point of origin, and in that case the tolerance or normal expectancy expressed is 6 per cent, 5 per cent of which is the expectancy at the rail head or rail point of origin, and 1 per cent for the line haul.

Here again provision is made to give the shipper an alternative if he can produce a certificate from a federal or state egg inspection agency to show that the normal expectancy would be less than 5 per cent we would give him the benefit of that, adding 1 per cent to cover the line haul expectancy.

Provision is made to give the consignee the privilege of opening the package of eggs, the carriers, however, reserving the right to be present at the time each case is opened so that we can have a joint inspection, and in the future, as now, the inspection is to be determined by joint examination by the consignee and the carrier or their authorized representatives.

We think, Mr. Commissioner, that it is highly desirable that such a tariff rule become effective as soon as possible [fol. 399] and that we would, as my counsel has announced to you, request permission to get an interim order to permit us to put in this tariff, and we expect it would be an immediate betterment insofar as the claims are concerned in the New York Metropolitan Area.

As the matter now stands, we continue to pay out more in claims than we receive in revenue on certain cars, and taking the overall picture I am sure that it is not any better than it was at the time I put in my exhibit, which showed that 50.5 per cent of our revenue was paid out in claims in New York City.

Examination by the Commissioner.

By Commr. Mitchell:

Q. Why wasn't this tariff filed with the Commission in regular order?

A. We considered that, Mr. Commissioner, and several of our member lines have raised the question of the propriety of any such action during the pendency of this investigation, and others thought that the 3 per cent was not sufficiently protective of the carriers' interests, and we have got that since it only covered the normal expectancy of point of origin.

Q. I have just seen it this morning, but this is entirely a new scheme, and a new tariff, isn't it?

A. It is a new tariff.

Q. This has nothing to do with, and is entirely different than the 5 per cent tolerance rule; isn't that so?

A. No, I do not think it is altogether different from the [fol. 400] tolerance rule, Mr. Commissioner. It is the same tolerance rule except that we have added 1 per cent for line haul normal expectancy in the case of the shipments now subject to the 5 per cent rule, and we have provided for a 4 per cent tolerance on shipments which are not subject to the 5 per cent rule. You must appreciate that the 5 per cent rule now in the tariff only applies to a limited portion of our egg traffic.

Q. Do you call this an amendment to the 5 per cent tolerance rule?

A. I call it a supplementation to the 5 per cent tolerance rule.

Q. You know, of course, that the 5 per cent tolerance rule is a Commission rule, established by the Commission, do you not?

A. Yes, sir. That is the reason we put in the 5 per cent.

Q. You are now asking me, as a single Commissioner, to put this supplement into effect? Is that what you desire?

A. We are asking for permission from the Commission to enable us to put this supplement into effect as soon as possible.

Q. That is not what you testified to, is it?

A. That is the idea I intended to convey. We would like to get some relief so that we can get this tariff in quickly, and the quicker it is in the sooner we will reduce our claim payments.

Commr. Mitchell: You have taken plenty of time waiting, three years, before you sought this relief.

What is bothering me is the procedure here. This is an [fol. 401] administrative hearing on my docket. I have no right to put in a supplemental rule. This has got to go to the Commission.

Do the railroad lawyers know that?

Mr. Blanchard: May I suggest that the Commissioner rule upon this proposed exhibit by refusing to admit it? It is so palpably repugnant to the Interstate Commerce Commission Act that it requires no consideration. It is inconsistent with Section 2011. It is an attempt to limit liability.

Commr. Mitchell: Well, of course, the railroads have the right, haven't they? You would not say they have not the right to offer evidence?

Mr. Matson: This is not evidence, Your Honor.

Commr. Mitchell: I am trying to find out, Mr. Matson. I am willing to admit frankly that I do not understand.

Let us have some of the railroad lawyers here explain just what you are asking for here.

Mr. Knowlton: Mr. Commissioner, at the opening of this hearing we had expected that this was the final hearing, and at the opening of this hearing there was a request made to have hearings on the Pacific Coast.

Commr. Mitchell: Let us get down to this exhibit now, Mr. Knowlton.

Mr. Knowlton: Yes.

Commr. Mitchell: What I want to know is, from some railroad lawyer here, what is the position of the railroads [fol. 402] upon this amendment or this supplement?

Mr. Knowlton: The position of the railroads generally is that we believe this tariff, when it is made effective, will correct the situation.

Commr. Mitchell: What are you asking now? What are you asking at this hearing; for this supplement?

Mr. Knowlton: We are asking for prompt action on behalf of the Commission.

Commr. Mitchell: Are you asking me, as the Commissioner here in charge, to put this into effect?

Mr. Knowlton: No.

Commr. Mitchell: What are you asking? That is what I want to know.

Mr. Knowlton: We are asking the Commission to give consideration to this.

Commr. Mitchell: Why don't you file it with the Commission?

Mr. Knowlton: We are, today.

Commr. Mitchell: In a hearing?

Mr. Knowlton: You believe that we can file it directly as a tariff?

Commr. Mitchell: You ought to know about that. I am not going to tell you what you can do.

Mr. Knowlton: I think we can. But this was finally drafted in the shape it is, only last night.

Commr. Mitchell: I am trying to find out, Mr. Knowlton, [fol. 403] what the railroads want now.

You know that this is a hearing in an investigation in which other parties here are entitled, if they desire, to a proposed report upon this. And this would not come to the Commission. You know that, don't you? This would not come to the Commission in this way until this entire hearing is completed and the proposed report, if the parties desire it, is prepared and they are given the right to file exceptions to it.

Mr. Knowlton: I will be glad to put it before the carriers as a matter to immediately publish the tariff if there is no objection from the presiding Commissioner in this investigation to proceed in that way.

But what we want is to get some action as soon as possible on this, and if we are going to have to have hearings throughout the next year on the Pacific Coast and cannot take steps until we do finish——

Commr. Mitchell: Let us stay right down to this one thing, Mr. Knowlton. The people on the West Coast are entitled to hearings if they want them out there. The entire action of the railroads in this case has not been too good.

But let us get down to this one article here. That is bothering me. You come in here with a witness and you say you want interim relief on it; is that right?

Mr. Knowlton: Possibly it is not right. I think it is that [fol. 404] we want some immediate relief of some sort, and we do not want to be forced to continue these claim payments under our present tariff, which the present tariff requires us to do in a way that we cannot go into court litigation satisfactorily, and we do not want to continue under that for two or three years, or at least another year.

We want to take some immediate steps, and I will be glad to give that consideration, to return it to the carriers.

Commr. Mitchell: I can understand that.

But I do not understand now, you have not told me yet what the purpose of introducing this exhibit here is.

Mr. Knowlton: The purpose of introducing this exhibit is to give the unified carriers' view as to what is necessary to clean up this claim situation.

Commr. Mitchell: You want no action on it now?

Mr. Knowlton: If it is possible to have action I am sure we would like to have it. If you do not believe it is possible there is nothing further we can do.

The Witness: May I interpose here, Commissioner?

Commr. Mitchell: Yes.

The Witness: We are trying to settle this thing in a practical way, and we had published to the trade and we put everybody on notice that we are going to change the tariff, and that was set for public hearing in Chicago some time last November, as I recall it.

[fol. 405] Before the hearing, several of our lines took exception to our going through a public hearing in the proceeding, on the theory that it would be objectionable to the Commission for us to make any tariff changes affecting the transportation of eggs while the investigation is in progress.

Now if we can have a lifting of our not being able to do anything at all while this investigation is in progress, that is what we are asking.

We would like to be in a position to go ahead and serve

notice to the public of this tariff change, and go through it. If they want a separate I&S proceeding on it, well and good, but we should put something in very soon to relieve this situation.

By Commr. Mitchell:

Q. Why haven't you filed this with the Commission; because of certain embarrassment?

A. The embarrassment that some of our people thought would be occasioned by our filing this tariff while the investigation is pending.

Q. You will admit that this is an entirely new tariff, won't you?

A. Yes, sir, it is new except that it is modeled on the 5 per cent tolerance which the Commission already recognized. Our main trouble is whether or not we would be guilty of any impropriety in publishing this tariff pending the outcome of this investigation.

[fol. 406] Mr. Knowlton: And it is to further apprise, in this record, all interested parties of what the carriers believe should be done, to give them a chance——

Commr. Mitchell: Mr. Knowlton, just so the record will show it, you are complaining here about the long hearing.

Your attorneys, representing the carriers were in to see me and asked that this hearing be carried over. I want the record to show that.

Mr. McLean: The position of the New York Central in this regard is that the proper way of getting this tariff before the Commission would be to file it, and if there is suspension proceedings let the suspension proceedings be merged with this hearing.

I may say that the carriers have only recently worked out the provisions of this tariff and there has not been opportunity to have it filed.

Commr. Mitchell: What bothers me is that I cannot see how any consideration could be given by me at this time to this supplement.

Mr. McLean: I do not see how, Mr. Commissioner, you could until this proceeding is concluded, issue any interim order, and we would be prepared to file it in the regular

way, and our purpose in filing it here is to put the remedy that we think is before us before the entire Commission and get such discussion and criticism of it as would be [fol. 407] helpful to us when it comes to filing it with the Commission. It is a proposal only.

Mr. Reilly: May I say I join with Mr. McLean in his statement, in behalf of Delaware and Lackawanna.

Mr. Wall: Mr. Commissioner, I also joint with Mr. McLean in his position.

Mr. Zearfaus: I join with Mr, McLean.

Mr. Canny: On behalf of Erie I wish to joint with Mr. McLean.

Mr. Staley: I wish to join the Department of Agriculture in moving that this be stricken from the record.

In the first place, it is improper to make any ruling on a matter of this kind before there is a full hearing. It is even worse where there is only half a hearing because you are more likely to arrive at an improper result than where there is no hearing at all.

In the third place, there is an attempt to shift the responsibility——

Commr. Mitchell: I am not going to do anything about the exhibit. The only thing in my mind is that I am not sure whether it should even be included in the report as a matter of information.

I am not going to attempt in any way to put in this supplement. I do not think I have any authority to do anything at all on it.

I think the shippers and consumers are entitled to have [fol. 408] this supplement filed in the regular order before the Commission, and then it will follow its regular procedure.

As I see this new supplement, it is an entirely new matter which has not been raised before in these hearings. I am not saying that you do not have to have it. It is very evident here in New York that you have got to do something if the railroads are going to continue to haul eggs into New York.

Mr. Zearfaus: Mr. Commissioner, it is the remedy which the railroads have set forth in this proceeding as a design to take care of the situation, and as Mr. McLean states, it

could be submitted for that purpose and also for the purpose of securing the benefit of the views of the trade so that they know just what we have in mind.

To that extent I think it certainly is relevant.

Commr. Mitchell: I reserve the ruling upon this exhibit at this time, and I will state now that as far as the exhibit is concerned, there will not be any cross examination on it until later on, at some other hearing.

Whether or not it is proper at this time, I have serious doubts. But I will not rule upon it at the present time.

Mr. Knowlton: I have no further questions.

The Witness: What does that mean with respect to publishing tariff?

Commr. Mitchell: You have the right to publish any tariff you want to. I do not see why there should be any embar-
[fol. 409] rassment on anybody, especially when you publish a new tariff.

It will not embarrass me, if that is what you are afraid of.

The Witness: That is it.

Commr. Mitchell: It will not bother me a bit.

Mr. Matson: In view of your ruling, Your Honor, we will not cross-examine the witness on any other statements.

Commr. Mitchell: Is there any further cross-examination?

(No response.)

Commr. Mitchell: That is all, Mr. Hodkinson.

(Witness excused.)

Commr. Mitchell: Are there any other witnesses?

Mr. Knowlton: We have freight claim agents here, if you wish to call them.

Commr. Mitchell: Let us have one freight claim agent.

Mr. Zearfaus: I call Mr. Young.

HOBART H. YOUNG was sworn and testified as follows:

Direct examination.

Commr. Mitchell: You may go ahead, Mr. Zearfaus.

By Mr. Zearfaus:

Q. Mr. Young, will you please state by whom you are employed and in what capacity?

A. My name is Hobart H. Young, 15 North 32nd Street, Philadelphia 4, Pennsylvania. I have been employed by the Pennsylvania Railroad Company as its Freight Claim Agent at Philadelphia, Pennsylvania, for the past five [fol. 410] years, and prior to that was in both the traffic and the operating departments for over 29 years.

Q. As Freight Claim Agent for the Pennsylvania Railroad Company do your duties make you familiar with the method of processing freight loss and damage claims and particularly such claims with respect to eggs?

A. They do. I am charged with the responsibility of the investigation and settlement of all freight loss and damage claims received by the Pennsylvania Railroad.

Q. And do you have a prepared statement, Mr. Young, which has been distributed, which sets forth the methods that you use in processing claims, and particularly the egg claims?

A. I do.

Q. Would you please proceed to read it?

A. Before I read the statement, I would like to offer my exhibit, entitled "Shippers' Statement in Support of Claim for Damage to Rehandled and Repacked Eggs or Storage Packed Eggs."

Commr. Mitchell: It will be marked Exhibit No. 29.

(Respondent's Exhibit No. 29, Witness Young, marked for identification.)

A. (Continuing) All claims filed against the Pennsylvania Railroad Company for loss, damage, injury or delay to freight, are received in the General Office of the Freight Claim Agent at Philadelphia, Pennsylvania. Upon receipt, they are reviewed, sorted into numerous classifica-

[fol. 411] tions, numbered, indexed by claimant's name and address, and acknowledgment made to the claimant.

Claims on shipments of shell eggs are segregated and assigned to experienced investigation personnel, under the supervision of an Assistant Chief Investigator. Such claims are examined to determine whether they have been filed in accordance with the provisions of the contract terms and conditions of the Uniform Bill of Lading, whether they are supported with proper transportation documents, invoices, accounts of sales, inspection records and other pertinent data, evidencing the right of the claimant to recover, and whether the alleged loss has been correctly computed, according to factors specified in the claim bill.

Where it is found that supporting documents are missing, incomplete or improper, claimant is requested to correct the deficiency. Where claim involves a shipment of shell eggs described as rehandled and repacked eggs or storage packed eggs to which the provisions of Consolidated Freight Classification No. 18, I.C.C.O.C. No. 62, A. H. Greenly, Agent, effective July 24, 1948, are applicable, claimant is required to submit a certified statement containing the information called for in Exhibit No. 29. In this statement, the shipper describes the claim shipment, the kind and type of containers used, the name of the firm or individual packing the eggs in such cases, the place where the packing [fol. 412] of the cases occurred and the date thereof. Additionally, the shipper certifies that in the packing operation, all broken, cracked and checked eggs, and eggs stained from broken eggs were removed from the cases, and that none such eggs were placed in the cases comprising the shipment, except as otherwise specifically described in the rail bill of lading. The shipper further certifies that the eggs were placed in new standard cases, with new flats, fillers and cushions, in accordance with tariff requirements.

Effort is also made to ascertain if the eggs were inspected prior to their tender to the rail carriers for transportation and, if so, to secure a copy of the inspection certificate or report.

Depending upon the nature of the claim, pertinent transportation records are obtained in the course of its investigation, including the destination inspection report in all

instances. This report is carefully examined to ascertain the load arrangement, the method of blocking, bracing or otherwise stowing the load as required by tariff, the number of cases containing damaged eggs, as verified by carrier inspection, the number of broken, cracked, checked and stained eggs, as verified by carrier inspection, the time consumed and amount of labor and materials expended in overcoming physical damage to the eggs and their containers, including packaging materials, also as verified by carrier inspection.

At New York, daily market quotations obtained by the [fol. 413] United States Department of Agriculture, as well as by private reporting agencies, are published on shell eggs, separately by grade, color, weight and size, as offered. Prices asserted by claimants and as shown in invoices or accounts of sale submitted in support of claims, are compared with published quotations. Unless it is affirmatively shown that the eggs in the claim shipment possess a destination value in excess of published quotations for their grade, any claim payment is limited to values predicated on such published quotations.

Where damaged eggs, such as leakers, checks and stained eggs, have some value and such eggs are accepted by the consignee or owner, any claim payment there on is limited to the difference between the good order value and the verified value of the damaged eggs.

Where the consignee or ~~owner~~ accepts eggs delivered in damaged condition, he is entitled to recover reasonable reconditioning expenses incurred in restoring the cases and their contents to the condition in which they should have arrived at destination, to the extent such restoration is possible. Actual labor and materials expended in such restoration, when verified by carrier inspection personnel, is allowed as a legitimate claim expense, where carrier liability is established. Where such expenditure of labor and materials is not so verified, the maximum amount allowed therefor is forty (40) cents per case in which damage is verified.

[fol. 414] Commr. Mitchell: Pardon me. You do allow actual labor and materials expended if it is verified by some

individual? "When verified by carrier inspection personnel"; what do you mean by that?

The Witness: The inspection forces of the Pennsylvania Railroad; that is, either the Railroad Perishable Inspection Agency or our own agency personnel charged with the responsibility for inspection and verification of damage.

Commr. Mitchell: Suppose I am a consignee and I get a certain number of cases of eggs and I say that I have so much labor and material due to the damage to the eggs. Do you come to my place of business and check it there?

The Witness: That inspection is usually made at the time the inspection for damage takes place, or shortly thereafter, during the reconditioning process. Where that is not done, then the 40 cents per case for labor and materials, exclusive of the cost of the case, is the maximum claim payment we recognize.

Commr. Mitchell: Suppose that was not done on the dock where they are unloaded, but I discovered that when I got to my place of business. Would you send a man over to check that, or would you accept my figure of cost?

The Witness: If that did not exceed 40 cents.

Commr. Mitchell: You do accept 40 cents if it runs that?

The Witness: That is right; the actual out-of-pocket ex-
[fol. 415] pense to the consignee in the reconditioning.

Commr. Mitchell: All right, go ahead.

A. (Continuing) This amount includes labor and packing material, but not the value of the case itself, where the case is damaged beyond further usefulness.

In our appraisal of the extent and measure of carrier liability for the physical damage to shell eggs discovered at destination, all claims thereon, regardless of destination, are carefully examined to determine if the provisions of the Consolidated Freight Classification were observed.

Full liability is not admitted,

(a) where the eggs were not rehandled and repacked or storage packed at the rail point of origin of the shipment;

(b) where the eggs were not packed in new standard cases with new flats and fillers;

(c) where carload shipments are not loaded in refrigerator cars;

(d) where fiberboard cases are loaded more than five layers high, except where specifically permitted by tariff;

(e) where any incomplete layer is not securely braced;

(f) where there is any mixing of wooden cases and fiberboard cases contrary to tariff provisions;

(g) where wooden cases are loaded on top of fiberboard cases;

(h) where cases are loosely loaded in a car by the shipper with either unbraced lengthwise or sidewise slack in the [fol. 416] load; or

(i) where failure of shipper, consignee, owner or their agents to comply with any lawful tariff rule proximately causes or contributes to the loss, damage or injury while the traffic is in the possession of the rail carriers as bailee.

Nor is any expense incurred by the consignee in the ascertainment of damage assumed by the rail carrier. Where origin inspection reports reveal the existence of shell damage prior to transportation, the amount of such damage is deducted from verified destination damage and carrier liability is appraised accordingly.

In summary, each and every individual claim filed with the Pennsylvania Railroad Company for damage to shell eggs is thoroughly investigated to determine as accurately as possible (a) the nature and extent of the damage occurring between the time such property came into the carriers' possession at rail point of origin and the time it passed out of their possession at the completion of the rail contract of transportation; (b) the proximate cause of such damage and whether it was due to negligent or unfair handling of the property by rail carriers while in their possession, custody or control, or if it occurred otherwise, either prior to or subsequent to rail transportation or as the result of any act or default of the shipper, consignee, owner or their agents; and (c) the full, actual loss sustained by the owner, as represented by the claimant, for the loss, damage or injury to the property caused by the rail carriers and for [fol. 417] which they are lawfully liable under Section 20 (11), Part I, Interstate Commerce Act as amended, the contract terms and conditions of the Uniform Bill of Lading.

to which the claim shipment was subject, and all lawfully published tariff provisions applicable thereto.

Each such claim is disposed of on the basis of its own individual merits, as developed by investigation and substantiation.

By Mr. Zearfaus:

Q. Does that complete your statement, Mr. Young?

A. It does.

Mr. Zearfaus: At this time, Mr. Commissioner, I offer Mr. Young's Exhibit 29.

Commr. Mitchell: Is there any objection?

(No response.)

Commr. Mitchell: It will be admitted.

(Respondent's Exhibit No. 29, Witness Young, received in evidence.)

Mr. Zearfaus: I submit the witness for cross-examination.

Commr. Mitchell: Is there any cross-examination?

Mr. Matson: Yes, sir.

Cross-examination.

By Mr. Matson:

Q. Mr. Young, the record thus far has developed, I believe, that it is humanly impossible for a packer of eggs to remove every single checked egg from a package. In view of that, I call your attention to the statement required [fol. 418] of claimants, as shown on Exhibit 29, under the columns wherein the amount of damage is listed. Claimants are requested by you, as I understand, to certify that "no broken, cracked, chipped eggs or eggs stained from broken eggs were placed in any case comprising this shipment, except as otherwise specifically described in the rail bill of lading." In view of the state of the record, do you have any proposal to change this certification that you require claimants to make?

A. No, I have no proposal to make such a change be-

cause that is the present tariff requirement on file with the Interstate Commerce Commission.

Q. Those tariff requirements are under investigation here, and I am asking you, in view of the human impossibility of complying with that, whether in your opinion that is reasonable?

A. Let me get your question clear in my mind; as to whether or not I think that this signature or certification is reasonable?

Q. As to checked eggs.

A. As to checked eggs?

Q. Yes, sir.

A. And I think you also asked whether or not we had any proposal to change that?

Q. Yes.

A. All that the freight claim agents want, in any case of this kind, is a determination and submission of the facts, and if we can obtain that within the facts we will decide the [fol. 419] merits of the claim.

Q. Is it your position that a claimant who certifies in accordance with this form that every single checked egg has been removed from its case—that he is making a false claim if he signs this if there is a single checked egg in the case?

A. The answer is obvious, that if there is a cracked egg in the case and he says there is not, that any statement to that effect is not correct.

Q. I am talking about checked eggs.

A. Checked eggs or stained eggs, or any other category that is mentioned here; cracked, checked, stained or leaking eggs.

Commr. Mitchell: As I understand it, Mr. Matson, if they find on lifting the lid, a stained, checked, cracked egg in there, they have the right to go through the whole case—one single egg. Isn't that the record?

Mr. Matson: We will have some testimony on that, too.

I am going back to the original point, your Honor. I am merely discussing at this point the propriety of stating in the tariff and in the certification that every single checked

egg is removed from the case, in view of the record in this case that such a condition is humanly impossible.

Commr. Mitchell: As I understand, what bothers me, Mr. Matson, is that the railroad would have to pay a claim if there was a single checked egg in any one of these cases.

Mr. Matson: We will show that that is not true.

[fol. 420] Commr. Mitchell: You mean that that is not the tariff?

Mr. Matson: No, I mean that they do not pay that claim.

Commr. Mitchell: Isn't that the provision in the tariff at the present time?

Mr. Matson: It might be interpreted that way, but we will show they never pay a claim on those eggs.

Commr. Mitchell: All right. That is not the record as I understand it to date, though.

Mr. Matson: The record has not been completed, your Honor.

Commr. Mitchell: I know it has not.

Mr. Matson: We have not put in our complete case as yet.

Commr. Mitchell: Go ahead.

By Mr. Matson:

Q. Do you care to express any further opinion on that?

Commr. Mitchell: Was that prepared by your legal staff? Or did you prepare it?

The Witness: This was prepared by the freight claim officers of Eastern Railroads to comply with the tariff provisions. It is word for word with the tariff provisions, and all that we ask the claimant to do is to certify that he did comply with the tariff provisions.

By Mr. Matson:

Q. I understand that, sir. The certificate required is in accordance with your present tariff provisions, which are here under investigation, and we want to know whether they are reasonable.

[fol. 421] A. It is, of course, unreasonable to require anyone or even to tempt anyone to certify to something that is not true. But we have no alternative.

Q. Under the present tariff?

A. Under the present tariff.

Q. Thank you. Now, these destination inspection reports that you mentioned in your testimony, they are the RPIA reports; is that right?

A. In most cases.

Q. You accept those as conclusive, do you?

A. The RPIA is the inspection agency, the fact-finding agency that is employed by our railroad to develop the facts with respect to destination,—origin and destination conditions, and one of their assignments is eggs, egg traffic. We use them.

Q. You accept that as final?

A. We accept their inspection reports as being conclusive as to the destination condition.

Q. There is no thought on your behalf, is there, that such reports do not actually state the amount of damage in the shipment, which is admitted by the inspector?

A. We have every confidence in the RPIA inspection reports.

Q. On page 3 of your statement you say, "Full liability is not admitted where the eggs were not rehandled and repacked or storage packed at the rail point of origin of the shipment."

I want you to be careful how you answer this, if you can [fol. 422] answer it. If you cannot answer it, just tell me.

Suppose that a shipment of eggs is loaded into a truck at the city limits in Chicago and trucked down to the rail terminal and put into a car and then sent to New York. Is that shipment packed at the rail point of origin of the shipment, or is it not?

A. The eggs being placed in the container, the new, standard container, with new flats and fillers?

Q. Yes, sir.

A. Within the city limits of the City of Chicago and delivered to the railroad within the city limits of the City of Chicago I would say that would be practical compliance with the tariff provisions.

Q. There is no question in your mind about that whatever?

A. I cannot conceive of attempting to stretch the city limits or contract them at any point.

Q. Thank you. That is the first direct answer I have had to that question, although it is very simple.

Now, you say, "Where origin inspection reports reveal the existence of shell damage prior to transportation, the amount of such damage is deducted from verified destination damage and carrier liability is appraised accordingly." Tell us how that works?

A. It is exactly what it says. If there is 2 per cent damage at origin and 4 per cent damage at destination then [fol. 423] the amount of claim payment is 2 per cent.

Q. How do you get that?

A. Ask the United States Department of Agriculture, the Federal State Agricultural Inspection Service or the claimant to submit them in support of their claim.

Q. Is that possible in connection with all claims?

A. Oh, yes. We can ask for anything that may be pertinent to the claim. It does not say that we always get them or that they are always in existence.

Q. That is what I mean. How often are they in existence; in what proportion of the cases?

A. I have made no study to determine the proportion. The proportion of instances where we do not receive from any source the inspection reports is far greater than those where we do receive them. But to the extent where they are available it is part of our job to investigate the origin point of the claim.

Q. When did you start doing that?

A. When did we start doing that?

Q. Yes, asking for inspection reports.

A. I have been doing it for a year or more, and it may have been done by the Department prior to that time.

Q. You mean your Department?

A. Yes, my own instructions were dated over a year ago to all of our investigators to do that very thing.

[fol. 424] Q. Are you aware of the fact that these origin inspections are conducted by candling and clicking the eggs?

A. I have never seen an origin inspection performed.

Q. You do not know what procedure is used at the origin inspection to eliminate the damage in the cases or to find the damage?

A. Well——

Commr. Mitchell: He said he never saw one, Mr. Matson. That ought to be pretty definite. He says he is merely a claim man, not in New York.

By Mr. Matson:

Q. Have you ever been down on the piers in New York?

A. I have.

Q. Do you know what kind of inspection is conducted at that point?

A. A visible or visual inspection of the shell damage at the time the cases are opened.

Q. And there is no candling or clicking of the eggs, is there?

A. I am not an inspector and I do not know what they do when they take them out and separate the sheep from the goats.

Q. You have seen them do a reconditioning of the cases?

A. I have seen them separate one egg from another and put it in different containers.

Q. Was there a candling lamp available at the time?

A. I do not recall seeing any.

[fol. 425] Q. I assure you there was not——

Commr. Mitchell: I move that that last be stricken out; Mr. Matson, let us conduct this in an orderly manner. If you have witnesses, put them on, but you are not testifying.

Mr. Matson: I apologize, your Honor.

That is all, thank you.

Redirect examination.

By Mr. Zearfaus:

Q. Mr. Young, in connection with the certification which is demanded of the shipper on your Exhibit No. 29, could that be generally readily secured by a certificate from the Department of Agriculture; that is, the information which you ask for, could it be secured from a certificate from the Department of Agriculture?

A. Oh, no. No, the Department of Agriculture certificate does not contain the statements that are required here of the shipper.

Q. But does it contain the number of broken, checked and damaged eggs, and so forth?

A. It contains a statement as to the percentage of shell damaged eggs that exist in the sample which was examined out of that lot by the Federal or State Egg Inspection Service, and to that extent it applies to the lot; that is, I understand it is so accepted.

Q. Can the shipper readily secure those certificates if he asks the Department to make the inspection?

A. My answer would only be an assumption that he [fol. 426] could. I think the United States Department of Agriculture probably could indicate whether or not those inspection services are available.

Q. Are you familiar with the cost to the shipper of such an inspection? Do you know?

A. Only by hearsay.

Commr. Mitchell: This man has testified that he does not know one thing about the origin of these eggs. If somebody knows about it, put him on the stand. This man does not know about it.

Mr. Zearfaus: That is all.

Recross-examination.

By Mr. Staley:

Q. Mr. Young, you testified in detail as to the investigation you make to determine the type of handling that the eggs have had by the shipper. Do you also make investigation to determine the type of handling that those eggs have had while they have been in transit and while they have been kicked around in rail yards?

A. We have developed the complete transportation records that are pertinent to the carrier liability.

Q. I am interested to know how you go about that. What effort do you make to find out if the car has received rough handling by the freight yard?

A. Our principal concern in the investigation of a claim is to determine the condition of the eggs at the point of [fol. 427] shipment, and the condition of the eggs at final destination, and whether or not that was kicked around in a freight yard at one point or another is immaterial. Our

responsibility is for the worst condition of the eggs at destination, rather than the condition at point of origin.

Q. Does it occur to you that if you could reduce kicking the cars around you could reduce claims?

A. Have I testified that I am responsible for anything like that in our railroad?

Mr. Staley: I move that the answer is unresponsive and it be stricken.

Commr. Mitchell: I think the answer was a good answer to the question asked, which I think was entirely immaterial.

That is all, Mr. Young.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Knowlton: Do you want some more freight claims?

Commr. Mitchell: No, we will hold those up.

Does the Department of Agriculture desire to proceed now?

Mr. Matson: Yes, sir.

Commr. Mitchell: We will hold the freight men until later in the case, if it develops that we need them.

Mr. Knowlton: Your Honor, there is one man from out of town here who is representing a truck operator, and we would like to use him at this point.

[fol. 428] Commr. Mitchell: All right.

K. E. Tanis was sworn and testified as follows:

Direct examination.

Commr. Mitchell: Give your name to the reporter, please?

The Witness: K. E. Tanis, Nappanee, Indiana.

Commr. Mitchell: Do you want to make a statement, Mr. Tanis?

The Witness: I do, sir.

Commr. Mitchell: State what your business is, Mr. Tanis.

The Witness: I am in the trucking business of hauling

eggs from a few points in Indiana to the New York market, and from October 1st——

Commr. Mitchell: Would you state now the name under which you do business?

The Witness: K. E. Tanis Trucking Company.

Commr. Mitchell: Is that incorporated?

The Witness: No, private.

Commr. Mitchell: It is just a trade name?

The Witness: Yes, sir.

Commr. Mitchell: All right, go ahead.

The Witness: From October 1st, 1948, from Hamlet, Indiana, and Plymouth, Indiana, we hauled 64,038 cases of eggs, 30 dozen per case, making a total of eggs hauled 1,921,140 dozen, and the claims on them, in dollars, was $931.52. We took the average market of the eggs of 50 cents over that period, which gives us 1861 dozen [fol. 429] broken eggs. We got a total of 96.86 of one per cent. That is the claims that were filed on those eggs.

And then, out of Mentone, Indiana, from June 6th to November 11th of 1949 we hauled 21,398 cases, and that gives us 641,940 dozen; and of that amount, $209.65 were claims. At 50 cents we arrived at 419 dozen broken eggs, or lost eggs, which gave us an amount of 64.27 of one per cent.

Commr. Mitchell: Those were from Mentone, Indiana, to New York City?

The Witness: Yes, sir.

That is all.

Commr. Mitchell: Is there cross-examination?

Mr. Matson: I have a question in the nature of direct examination.

Commr. Mitchell: Go ahead, Mr. Matson.

By Mr. Matson:

Q. Mr. Tanis, included in those claims was there any instance in which a truck was wrecked?

A. We had one instance where, in the State of Ohio, we were crowded off the highway with one truck, by an automobile, and in the truck coming back to the highway it hit an abutment and it took all the axles out from under

the truck, except the front axle, and in that wreck we went and reloaded that truck immediately into another truck, and we had $36 worth of damage in that truck.

[fol. 430] Mr. Matson: Thank you, Mr. Tanis. That is all.

By Commr. Mitchell:

Q. Mr. Tanis, are you a common carrier or a contract carrier?

A. We are a private carrier.

Q. You are a private carrier?

A. Yes, we haul nothing but eggs.

Q. Well, the eggs you haul belong to you?

A. No, we wrote a letter to Mr. Blanning of the Interstate Commerce Commission and we got a photostatic copy back that we were exempt as to I.C.C. regulations, only as to hours and safety regulations.

Q. Do you do any other hauling except the hauling of those eggs?

A. No, sir.

Q. You haul for only one company, do you?

A. For these three points, sir.

Q. I mean at Mentone, Indiana, do you haul from just one place there, one individual?

A. Yes, sir.

Q. How many cases of eggs have you hauled on a truck?

A. We haul about 600 on a truck.

Q. Do you have a special rate with these people that you haul for?

A. Yes.

Commr. Mitchell: Is there cross-examination?

Mr. Zearfaus: I would like to ask a couple of questions, [fol. 431] Mr. Commissioner.

Cross-examination.

By Mr. Zearfaus:

Q. What was the period covering the Hamlet and Plymouth shipments?

A. From October 1, 1948, to November 4, 1949.

Q. Do you know when your claims occurred in connection with that period? Were they prior to June 24, 1948?

A. Yes, they were.

Q. They were?

A. Yes.

Q. You had none since that time; is that a fact?

A. Oh, yes, we had claims.

Q. In connection with these particular figures you have given here?

A. Oh, no, no. These were the claims up to date.

Q. You say you have had claims since June 24, 1948, but they are not included here?

A. They are in here.

Q. Then you have not had any claims since June 24, 1948; is that right?

A. I did not quite get that.

Q. First I asked you whether your claims in connection with your Hamlet and Plymouth shipments—when they took place; in connection with shipments moving prior to June 24, 1948.

A. They took place from—the claims started coming in [fol. 432] October 1, 1948, and continued to come in until November 4, 1949; that was the period of time that we hauled the eggs.

Q. How many claims did you have prior to June 24, 1948, and how many did you have after June 24, 1948?

A. I could not say just how many claims. I can give you the amount in dollars, that the claims amounted,—that the claims amounted to.

Q. What is the amount of dollars?

A. $930.52.

Q. That is on all of them?

A. No, that is on Mentone and Hamlet.

Q. Yes, all of them during the period that you mentioned?

A. That is right.

Q. How do you arrive at your figure of 50 cents a dozen, Mr. Tanis?

A. Well, we took—for instance, eggs up here were selling for 80 cents, and we took what was the lowest market and we tried to arrive at a fair price, which we figured this 50 cents was a low price, taking it over the period of time that we hauled the eggs.

Q. On whose behalf are you appearing in this proceeding? Who asked you to appear?

A. Who asked me to appear?

Q. Yes, sir.

A. Why, I am interested in this to one extent. I am a [fol. 433] stock holder in a northern Indiana cooperative.

Q. I would still like to have an answer to my question. Who asked you to appear here?

A. The Northern Indiana Cooperative.

Commr. Mitchell: Do you haul for the Northern Indiana Cooperative?

The Witness: I do, sir.

By Mr. Zearfaus:

Q. Where is your place of business? I do not think you gave that, did you?

A. Yes.

Commr. Mitchell: Repeat it.

The Witness: Nappanee, Indiana.

Commr. Mitchell: If I have figured correctly, your loss for 600 cases of eggs on each load was about $5 a load.

The Witness: That is about what it amounts to; very little over the period of time that we hauled them.

We found out that in certain months of the year the egg breakage is a whole lot greater than any other months, and that is from the months, I would say, from about the first of May till about the first of November. In the other months the breakage is very little. That is the way we have found it.

By Mr. Zearfaus:

Q. How long have you been hauling for these people?

A. Since October.

Q. That is when you commenced?

[fol. 434] A. That is right.

Q. Do your consignees have the privilege of going through every case to determine whether or not the damage exists? Do you know how they handle that?

A. The receivers, or the consignees?

Q. Yes, sir.

A. Yes, they have the privilege.

Q. Do they do that? Do you know?

A. I do not know.

Mr. Zearfaus: That is all.

Mr. Staley: You deliver those eggs to certain receivers here in New York, do you not?

The Witness: I do, sir.

Mr. Staley: Do you know whether those same receivers received their eggs by rail from the same shippers prior to the time you commenced trucking the eggs?

The Witness: Yes, sir, they used to get all those eggs by rail.

Commr. Mitchell: Do you deliver them to different parties here in New York?

The Witness: No, sir, we deliver them down here on West Street, and a cartage company unloads our trucks because our trucks are too large to deliver them direct to the receiver.

By Mr. Knowlton:

Q. Do you have terminals on West Street?

A. We do not.

[fol. 435] Q. You use the public streets, right in front of the ferries there?

A. Right under the ramps, yes, sir.

Q. Do you pay for parking space there? I know private cars have to.

A. The cartage company takes care of that. He is supposed to see that we have a place to park there in order to unload.

Q. Is the shipper the consignee?

A. Is the shipper the consignee?

Q. Yes, sir.

A. Yes, sir.

Q. It is all one organization?

A. The eggs are brought in from farmers to the Northern Indiana Cooperative.

Q. Have you had any trouble with the city officials? Have you had to pay out directly or indirectly fees to the city officials for the use of the public streets as a warehouse?

Commr. Mitchell: That question is immaterial and has no bearing on the issues in this case whatever.

By Mr. Knowlton:

Q. What interest do you have in the railroads trying to clean up the claim situation?

A. I have no interest in the railroads at all. My interest is to see that the farmers down there get a good price for their eggs and that their eggs are handled right.

Commr. Mitchell: You are here to show that eggs can be [fol. 436] hauled from the farmer in Indiana to New York without paying back a big part of it in the way of claims, aren't you?

The Witness: Yes, sir.

Commr. Mitchell: That is right. And we are glad to have you.

By Mr. Reilly:

Q. Mr. Tanis, do you know whether or not the shipper or the consignee carries in-transit insurance on those egg shipments?

A. Do they carry insurance?

Q. Yes. Do you know?

A. No, I carry the insurance.

Mr. Reilly: That is all. Thank you.

Mr. McDonald: I have one or two questions, Mr. Commissioner.

Commr. Mitchell: Go ahead.

By Mr. McDonald:

Q. Mr. Tanis, on shipments originating at Hamlet, where do those eggs actually originate; right in Hamlet or are they collected at points a considerable distance from Hamlet?

A. I would not know. Like I said before, the eggs are brought into this point and loaded there in our trucks from different farmers.

Q. Are they already packed and cased when they are brought to your truck from these farm points?

A. They are.

Q. Would that be true at Plymouth and Mentone, also?

[fol. 437] A. That is right.

Q. I have just one other question: Can you tell me a little bit more about how you arrive at that 50 cent price? If I followed you, I understood you to say that the New York delivered price would be approximately 80 cents, but in settling the claim you decided that 50 cents would be a fair price, is that correct?

A. No, I did not say that.

Q. Would you please tell me exactly what you meant to state there?

A. I said at some times of the year the eggs are 80 cents and some times they go down to 35 cents.

Q. Do you know on what basis any given claim was paid that is included in these figures that you have given us? Does it represent the current market price at the time or is it an overall average for the period you have mentioned; or what?

A. They file the claims on the price of the eggs that were sold on that day that the eggs were received.

Q. And is that the basis on which you pay?

A. That is right.

Mr. McDonald: That is all, thank you.

Commr. Mitchell: This $209.65 is the total amount of dollars that you have paid on claims for eggs which you have hauled from Mentone, Indiana, to New York?

The Witness: That is right.

[fol. 438] Commr. Mitchell: That is the total dollars that you paid?

The Witness: That is right.

Commr. Mitchell: All right.

Any further questions?

(No response.)

Commr. Mitchell: Thank you, sir.

(Witness excused.)

Commr. Mitchell: Mr. Matson, call your next witness.

Mr. Matson: I call Mr. Pidoriano.

JAMES PIDORIANO was sworn and testified as follows:

Direct examination.

By Mr. Matson:

Q. Will you state your full name, Mr. Pidoriano?
A. James Pidoriano, P-i-d-o-r-i-a-n-o.
Q. Where do you live, Mr. Pidoriano?
A. 85 Baxter Street, New York City.
Q. Where do you work?
A. I work for Zenith Godley Co., Inc.
Q. What business are they in?
A. That is a butter and egg business.
Q. What do you do for them?
A. Well, I go on the dock and inspect cars of eggs, and if they are damaged I get them in shape.
Q. How long have you been doing this?
A. Well, this particular work I have been doing for [fol. 439] about ten years, but I have been in the candling business for about 40, altogether. I have been at the business about 40 years.
Q. When you go down to the dock and you recondition the damaged egg cases—is that what you call it?
A. That is right.
Q. Will you tell us in your own words just how you go about doing that? Start right at the beginning and tell us just exactly what you do.
A. Well, I go down with the PEA Inspector and I open 20 cases, and if there is any damage, why, we go and recondition the car. Of course, if it shows no damage, of course, we let it go.
Q. In picking out the 20 cases can you tell from the outside of the case whether a case is going to have a damaged egg in it, or do you have to wait until you get the lid off?
A. Oh, we have to wait until we get the lid off. Of course, there are some cases which have external damage, from being banged in, or something.
Q. Do the fellows down there who examine have some special talent in inspecting damage?
A. No, I would not say that.
Q. When you go about reconditioning eggs, how do you

do that? You take the damaged case and you set it down in front of you. Then what do you do?

A. Well, we go through the cars first.

Q. All right.

[fol. 440] A. And we open them all up and whatever shows damage we lay on one side, and the good ones we put on another side. Then, as we get through opening all the car, we go about reconditioning the broken cases.

Q. Well, now, you say the cases that show damage you set at one side?

A. That is right.

Q. In picking out those particular cases that show damage, how deep do you go into the case?

A. Just the top.

Q. Just the top layer?

A. We just take the cover off, and if it shows visible breakage we lay it to one side.

Commr. Mitchell: Suppose it shows a checked egg in there?

The Witness: That is impossible, to see a blind check.

Commr. Mitchell: Suppose it is a stained egg?

The Witness: If it is just stained?

Commr. Mitchell: Does it have to be a cracked egg?

The Witness: No, it shows damage which——

Commr. Mitchell: What do you mean by "damage"?

The Witness: Leaks. The fillers are wet. The eggs are all broken and cracked.

Commr. Mitchell: You do not check the egg—a checked egg or a cracked egg or a stained egg would not be sufficient?

The Witness: No, I do not bother with that.

[fol. 441] Commr. Mitchell: It would have to have a leak in it?

The Witness: That is right.

By Mr. Matson:

Q. You take a case of eggs and look in there, and suppose you might happen to see an egg with a crack on the top of it and you could take that egg out easily, what would you do in a case like that?

A. If it is really cracked? Where it is visible?

Q. Yes.

A. If it is one of the bad order cases?

Q. Yes.

A. We take that out; that is, if it is one of the damaged cases.

Q. Do you replace that egg with a good egg?

A. That is right.

Q. Do you look down further in that case?

A. Not if it is not necessary, I do not. You can tell, more or less.

Q. If it is just one egg you replace that egg and put it with the good cases?

A. That is right.

Q. In the cases where it shows more than one damaged egg, what inspection do you make in that case?

A. If it has extensive damage, of course, you have to keep going down because the breakage continues all the way and you go as far as it goes.

Q. Suppose there is damage in the first layer—that is, [fol. 442] cracked eggs, leaking eggs in the first layer—and none in the second layer. Do you look at the third layer?

A. Well, no, as a rule I do not because the firm sells these eggs so fast I am glad to get rid of them as quick as I can. So as a rule if it shows a good egg underneath I take a chance.

Q. Do the other handlers do it in the same way?

Mr. McDonald: I object.

Commr. Mitchell: I think this man has to be limited to what he knows.

Mr. Matson: I submit it is not unreasonable to ask him that. He has been down there for forty years. He knows what they do.

Commr. Mitchell: If you know what they do, you can testify.

A. I have worked with the other people, and they do about the same as I do.

By Mr. Matson:

Q. Do you use a candling light down there?

A. No.

Q. Is that permitted by the RPIA?

A. I do not know whether it is or not, but we do not do that.

Q. Does anyone ever use a candling light down at the piers?

A. Outside of an inspection maybe by a buyer.

Q. If a buyer wants to know what he is getting——

A. If he wants to know the quality he takes like a handful with him over to the light.

Q. Is that ever done with the eggs when the cases are reconditioned?

[fol. 443] A. No.

Q. In packing the eggs from the damaged case into the good case do you click the eggs?

A. Oh, no.

Q. Do you lift the eggs up, a whole layer at a time and put them in the other case? Is that how you do it?

A. Oh, yes.

Q. A whole layer at a time?

A. Yes.

Q. How many dozen are there in a layer?

A. Three dozen.

Q. Three dozen eggs you lift up all at once and put from one case into the other?

A. That is correct.

Q. And if you see no cracked, leaking eggs down below that, you do not go any further?

A. That is right.

Mr. Matson: That is all, thank you.

Commr. Mitchell: Cross examination.

Cross examination.

By Mr. Knowlton:

Q. I just want to ask if you receive your shipments by rail?

A. That is right.

Q. Do you belong to the union?

A. That is right.

[fol. 444]. Q. You personally belong to the union?

A. Egg inspectors union.

Mr. Knowlton: That is all I have.

Commr. Mitchell: Any further cross examination?

(No response.)

Commr. Mitchell: Thank you, sir, for coming.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Matson: I call Mr. Hermon Miller.

HERMON I. MILLER was sworn and testified as follows:

Direct examination.

By Mr. Matson:

Q. You are the same Mr. Miller who testified in the hearing at Chicago for the Department of Agriculture?

A. That is right.

Q. At the Chicago hearing you presented exhibits Nos. 22 and 23 and you indicated at page 294 of the record that, "We have some other material for 1948 that we haven't got summarized yet that we will throw into this when we get it completed."

Have you made some subsequent checks, since the Chicago hearing?

A. Yes, Mr. Matson. That was with regard to the amount or the type of egg that was going into cases in midwestern shipping points and the type coming out at destination, and we have examined the complete records and our [fol. 445] testimony will stand as presented in Chicago.

Q. As I recall that testimony, at pages 269 to 298 of the transcript, you found that there were packed into the cases at origins 1.9 per cent checks?

A. That is right.

Q. And 1.4 per cent stains and dirties. Do your subsequent tests that you have run on this material and other material bear you out in those figures?

A. They do.

Q. Incidentally, those 1.9 per cent checks, were they checks which would be visible to the naked eye?

A. Our examinations were all made by the use of candle.

Q. You have heard Mr. Pidoriano testify just a few minutes ago?

A. Yes.

Q. Could you have found that 1.9 per cent checks by an examination such as Mr. Pidoriano described?

A. I would rather say that the two examinations were made under entirely different conditions.

Q. We have distributed two pamphlets which you have brought with you, one entitled Changes in Egg Quality, dated August, 1949. I believe that this particular pamphlet was in the hands of the printer at the time of the Chicago hearing; is that right?

A. That is right.

Q. And this is a complete study. The other pamphlet is [fol. 446] entitled Marketing Practices and Egg Quality. Will you tell us your part in the preparation of this pamphlet?

A. This pamphlet, I would like to indicate, will be in printed form around the first of January, including four seasons of the year. You will note that this was for a determination of quality in August, 1948, and in the study in the northern area the examinations were made four times during the year, and so this is labeled a preliminary report. Another one will be printed.

We were cooperating in that study not as extensively as in the mid-west, but we did help with it.

Q. And you have used the basic material contemplated by these two pamphlets in making these tests that you have described?

A. I do not understand what you mean.

Q. In arriving at the conclusion that there is 1.9 per cent damage at origin.

A. In the midwestern area, of course, as you gentlemen probably know, the eggs are reworked after they are re-

ceived from the farmers, and whereas 1.9 may be what leaves the shipping point, this study indicates that I believe around 4 per cent would arrive at that point, 4 or 5 per cent. So that would imply that some of the damage, the difference in reworking the eggs is improved.

The study would show what comes to the assembly points in most cases of origin, in what comes to the center markets, [fol. 447] the differences would be shown. On the average about 5 per cent of the eggs arriving at those points would be in checked condition. They are reworked, and we found that about 1.9 per cent was leaving those points, not the same points, but points comparable.

Q. After the eggs left the point in the west, what damage is attributable to rail transportation?

A. The difference we found is .8 per cent.

Q. .8 per cent?

A. .8 per cent.

Mr. Matson: Mr. Commissioner, may we have these exhibits marked 30 and 31?

Commr. Mitchell: Special Bulletin No. 361 will be marked Exhibit No. 30, Witness Miller.

(Department of Agriculture Exhibit No. 30, Witness Miller, marked for identification.)

Commr. Mitchell: Marketing Practices and Egg Quality will be marked 31.

(Department of Agriculture Exhibit No. 31, Witness Miller, marked for identification.)

Mr. Matson: We offer Exhibits 30 and 31 in evidence.

Commr. Mitchell: Is there objection?

(No response.)

Commr. Mitchell: They will be admitted.

[fol. 448] (Department of Agriculture Exhibits Nos. 30 and 31, Witness Miller, received in evidence.)

Mr. Matson: The witness is submitted for cross-examination.

Commr. Mitchell: Cross examination.

Cross-examination:

By Mr. Knowlton:

Q. That 8/10ths of one per cent that you mentioned, did you mean that that is the amount that you would expect in a normal rail shipment?

A. What that is is what would be found if you took just a sample of shipments at origin, and then we marked the cases at origin so that we knew which were the eggs, and we looked at the same eggs at destination. So we knew the difference at different places. Otherwise the inspection is the same.

In other words, we used an inspector at origin, a qualified inspector who had a certificate of examination from the Department of Agriculture, and we used a similar inspector at destination.

Q. Those cases were in apparent good order at destination?

A. We had some damage at destination. We had some damaged cases.

Q. How did you record those?

A. Those were recorded and averaged in.

Q. Do you know how many there were?

A. I do not know.

Q. Where did you get the information that you had damages?

[fol. 449] A. From the men who made the examinations. We have complete records of every examination.

Q. There is a little confusion here. What operation did you use in testing; clicking or candling?

A. No, we used complete candling at both points.

Q. There seem to be some other questions as to whether that underlying data is available to us.

A. You mean the details?

Q. Yes.

A. We have indicated we will not give out details on individual cars.

Q. Can't you give that to the railroads?

A. We had to have the cooperation of three groups, the shippers, the railroads and the receivers, and to get that

cooperation we had to indicate to all of them that we would not reveal any individual figures.

Q. Did you say this was a hundred cases?

A. Fifteen cases to the car, a hundred eggs in each case, 115 cars supported by approximately 8,000 additional cars.

Q. These are all rail tests?

A. All rail tests.

Q. Can you go so far as to identify the cars for us?

A. We probably could, yes. In our office we have the detail certificates. If you want to stop in we will be glad to talk to you.

[fol. 450] Q. I would like to request that you supply, at least for cars in New York, Philadelphia and Boston—do you know where the cars were delivered?

A. They were delivered in all parts to the east coast, the Gulfport cities and the west coast.

Q. Do you know how many New York cars there were in the study?

A. Around 12, as I recall, of the 115. In the masses, the 8,000 or so would be more.

Q. Could you give us the number of cars in the movement in New York and Philadelphia, please?

A. Yes, I will when I get back to New York.

Q. Did you go into the study far enough to know whether there was any difference in the New York cars from the cars to other parts of the country?

A. There was some indication—we took out the New York and Philadelphia cars, and there was some indication that there was more damage in New York than in Philadelphia.

Q. About how much?

A. I do not recall, and I do not place too much confidence in breaking down our statistics that far. I believe we need to make a more careful examination of the market itself, and get more than 12 cars.

Mr. Knowlton: That is all.

Mr. Staley: I have some questions.

By Mr. Staley:

Q. Mr. Miller, I believe you testified that you found that [fol. 451] on eggs shipped from the points where the eggs are repacked and rehandled there was 1.9 per cent of those eggs that had some sort of shell damage?

A. Yes.

Q. That shell damage was ascertained by candling?

A. That is right.

Q. Did that include what is known as blind checks?

A. Yes.

Q. What part of those 1.9 per cent of the eggs would represent blind checks?

A. We have no way of telling, Mr. Staley.

Q. Do you have an opinion on the subject?

A. No, I have not.

Q. Would those checks be of the kind that would be easily ascertainable in the kind of examination that Mr. Pidoriano made?

A. I think they could only be determined either by clicking or more accurately, of course, by candling.

Q. Do you know whether the shippers actually packed broken eggs when they repacked?

A. Our records show .1 per cent loss; that includes blood spots, meat spots, rots if there are any, and leakers. I think the proportion of leakers would be very, very small, if any.

Mr. Staley: That is all.

Commr. Mitchell: Thank you, Mr. Miller, that is all.

(Witness excused.)

[fol. 452] Commr. Mitchell: Call your next witness, Mr. Matson.

Mr. Matson: Mr. Earle Winters.

EARLE WINTERS was sworn and testified as follows:

Direct examination.

Commr. Mitchell: Will you give your name and occupation?

The Witness: E. Winters. I represent the Traffic Com-

mittee of the New York Merchantile Exchange, and I am employed by Zenith Godley Co.

By Mr. Matson:

Q. How long have you been in the egg business, Mr. Winters?

A. I have been associated with the egg business for the past ten or twelve years, but I have been actually engaged in the last four years by Zenith Godley.

Q. Is Zenith Godley one of the large receivers of eggs in New York?

A. Yes.

Q. Will you describe for us in your own words what transactions take place when you receive a carload of eggs, either in good order or in bad order?

A. We receive invoices from the middle west prior to the arrival of the car of eggs. We then give Mr. Pidoriano a record of the car number, number of cases in the car and the location of the point of arrival. Jimmy goes down, the first thing in the morning on the day of arrival, and in- [fol. 453] spects those eggs along with the RPIA and the railroad representative, and he reports back to us as to the condition of the car, and he is then empowered to engage a gang of men or as many as he needs to recondition the car.

We then go ahead and sell our eggs, or most of them have been sold prior to arrival, on the basis of the market on the day of arrival, and we proceed to hold back enough of those eggs to cover any repacking.

Q. If there are no bad order cases reported to you by Mr. Pidoriano, what do you do then?

A. We proceed to accept the car in good order and sell it as such, and no claim is placed against it, and the eggs are taken off the dock.

Q. Suppose you sell those eggs, and it turns out that there were some damaged eggs in the case. What happens then?

A. If there are enough of them to warrant, and we consider a dozen or more broken eggs in the case enough to warrant a claim by the customer, we allow that by the

customer. But it is out of our own pockets because we have accepted the case in good order.

Q. You do not attempt to recover it from the railroads?

A. We never have.

Q. In the case of a bad order car, to what extent does the railroad pay for your expenses and damages?

A. We are guided solely by the form 20 issued by the [fol. 454] RPIA in making a claim. We simply claim for what they allow on that particular form. In most instances there is a deduction on labor, which we have to stand, for opening cases. We have to pay our men in full for the total time consumed in opening cases and repacking the car.

Q. Suppose you have a shipment of 480 cases, and only 120 of them have been smashed by the railroad. How many cases do you open?

A. We would have to go through the whole car to find the 120, and then the 120 have to be gone through also.

Q. You mean you recondition the 120 cases?

A. Because they have been set aside, and no deliveries are made out of those 120 until the inspector says they are all right.

Q. But you also lift the lids of the other 360 cases?

A. Our representative does; Mr. Pidoriano.

Q. Suppose, in going through this car, you find a case of eggs that has in its top layer a cracked egg visible, just one cracked egg. What do you do in that case?

A. We accept that case in good order generally. We do not ask for damages, because we happen to be in the position of having sold all the eggs in the car, and we would rather have eggs than damages. So we try to get every case we can to sell, and fill our orders. So we do not go down that far through damages, except to reject.

[fol. 455] Q. You do not set aside this case with the one leaking egg in it?

A. No.

Q. If the case happened to have a checked egg in it, what do you do about that?

Mr. Zearfaus: Isn't that Mr. Pidoriano's work?

The Witness: That is right.

Mr. Zearfaus: And he is the man that knows about that, rather than you?

The Witness: That is right.

Mr. Zearfaus: I object to that.

By Mr. Matson:

Q. Does Mr. Pidoriano operate under your instructions?

A. That is correct.

Q. Have you been down on the piers and in the egg market enough so that you can state whether other receivers of eggs operated substantially the same way?

Mr. Zearfaus: I object.

Mr. McDonald: I object. He is appearing on behalf of certain specified individuals. It seems to me he can testify on behalf of them only.

Mr. Matson: He is appearing on behalf of the New York Mercantile Exchange.

Commr. Mitchell: What is your official position with the New York Mercantile Exchange?

[fol. 456] The Witness: I am at present a member of the Executive Committee, and also on the Traffic Committee.

Commr. Mitchell: Does the Traffic Committee have charge of these claims and investigations?

The Witness: They have charge of looking into any matter that would affect transportation of butter, eggs and poultry.

Commr. Mitchell: We are interested in eggs now.

The Witness: That is right. We do look in to that.

Commr. Mitchell: If you know, you can answer.

By Mr. Matson:

Q. The question is whether you have been down on the docks and in the egg market sufficiently to know whether other egg receivers operate in substantially the same way as you do?

A. I have been on the docks and I have seen them operate in substantially the same way our gang works.

Q. And they have substantially the same policy that your firm does?

A. Same policy.

Q. How do you compute the amount of a claim? Will you give us an illustration of that?

A. On form No. 20, issued by the RPIA, after the reconditioning of a car we find there are so many leakers, broken, stained, checked eggs. We then submit that on our claim.

Now, those particular eggs came out of different grades. Mr. Pidoriano, after he is finished reconditioning for us, [fol. 457] tells us how many of those eggs came out of, say, the browns, the whites, the mixed colors, and so on. We then have to couple with our claim a certified statement of returns to our shippers, which is in essence our cost of the egg.

In computing our claim we take the difference between that cost and our selling price of those eggs, such as stains, dirties, checks, and on the loss, the eggs which have actually been lost, broken and thrown away, we put in a claim for the difference between the cost price of that grade and the full cost.

Q. How is the element of labor computed on the claims?

A. That is written on form 20 by the RPIA representative; so many hours consumed in reconditioning the cases, so many hours lifting covers, not allowed. We pay the full amount of both hours combined, and we have to pay the not allowed labor out of our own pocket.

Q. What does that not allowed labor relate to, the 360 cases that we mentioned a while ago that you lift the lids off of but find no damage on the top layer?

A. That would be a portion of the whole amount. They do not agree. I went back to Claims yesterday and found there are different numbers of cases involved in that item of not allowed hours.

Q. What other things do you do that you are not allowed to claim for the cost of labor on?

[fol. 458] A. Well, that is about the only thing we actually lay out in cash. However, there is an element of waiting for the claim to be paid, which does not reflect on our books as any profit; in fact, it results in a loss for the time being.

Q. How long do you wait for your claims to be paid?

A. On the average of four months.

Q. How much do you have outstanding at the present

time, and speaking for Zenith Godley how much do you have in claims outstanding?

A. At the present time about $9,000.

Q. How does that compare with a year ago?

A. It is much better than a year ago. We had been averaging ten to eighteen thousand dollars outstanding.

Q. How do you account for the smaller amount outstanding now? Are they paying the claims faster?

A. They paid quite a few claims here recently, which brought that figure down. We have never been able to put our finger on the reason why the claims were held back.

Commr. Mitchell: Is your volume this year as heavy as it was last year?

The Witness: Yes.

Commr. Mitchell: It is as heavy?

The Witness: Yes.

Commr. Mitchell: I notice that the volume of eggs coming into New York is about a third of what it was last year.

[fol. 459] The Witness: Our case volume may be less, but our case loading is about the same due to less loading in a car. The number of cars is about the same.

By Mr. Matson:

Q. Do you receive eggs entirely by railroad?

A. Ninety-five per cent by railroad.

Q. Is that true of other receivers in New York; do you know?

A. I cannot speak for all of them, but the general trend seems to be no.

Q. The others receive——

A. By trailer.

Q. Predominantly by trailer?

A. I can only go by my own experience and what my man tells me, down on the docks. On the Erie and the B&O we have the only eggs down on the dock, when a year ago there were others.

Q. When a damaged case contains checked eggs and leakers for which you file a claim, how do you account to the shippers?

A. We make no accounting on a claim to a shipper at all. We pay the shipper in full for his invoiced eggs, and we assume the claim. The only reason the shipper would ever have to know that he had a claim is when he receives this affidavit that you have seen as an exhibit here.

Q. Do you pay the shipper in full for the sound eggs, or do you make a deduction?

A. We make no deductions on the shipper whatsoever.

Q. When you recover from the railroads for the damaged [fol. 460] eggs, what is the amount of the recovery on checked eggs and leakers?

A. Well, we recover what we paid the shipper, only. We recover the difference between what we pay the shipper on his graded eggs as against what we had to sell the leakers and checked for.

Q. How much profit do you make in those transactions?

A. No profit.

Q. You make no profit at all on those damaged eggs?

A. We could not make a profit because we have to give, with that claim, a certified statement of our returns to the shipper.

Q. Do the railroads settle the claims for the full amount that you ask for?

A. They have in nearly every case with us, except recently where this origin point question came up, where they have been applying some point of origin in sections against our case.

Q. How does that work?

A. On one claim, it knocked the claim from $186 which we assumed down to $9, where they applied the 5 per cent tolerance rule.

Q. Have you ever had a straight percentage reduction made on your claims?

A. Only on the 15 per cent rule, where eggs were trucked to a railhead. Then there was a straight 15 per cent deducted.

Q. How long ago did that occur?

A. That occurred a year ago. We do not receive eggs like that any more.

[fol. 461] Mr. Knowlton: What is that 15 per cent?

The Witness: Where eggs were trucked to a railhead.

By Mr. Matson:

Q. What proportions of the cars that you get in have damaged eggs?

A. What proportions of the cars?

Q. Yes.

A. Of the total number of cars received?

Q. Yes.

A. At the present time they run about 50 per cent.

Q. About 50 per cent?

A. Yes.

Q. That is, about half of the cars that you get in have damaged eggs?

A. Yes.

Q. Do you know what the cause of the damage is?

A. I would only be hazarding a guess.

Q. Have you an opportunity to observe the operation of the classification yards in New Jersey?

A. Yes, I have.

Q. And is it your observation that the cars are handled carefully over there?

Mr. Zearfaus: Objection.

Mr. McDonald: I object to that, Mr. Commissioner.

Commr. Mitchell: I think he can answer. He says he has observed it.

[fol. 462] Mr. McDonald: He has not qualified as a railroad man.

Commr. Mitchell: He can understand. I think he knows whether the cars are slammed around; whether he is a railroad man or not.

A. I think if anybody can read they can be qualified to answer that question because on the side of certain of those cars there is a sign "Do not Hump", and I have seen some of those cars go over the hump.

By Mr. Matson:

Q. Is it your belief that those cars contained eggs?

A. There is a sign, that they have eggs, on them.

Q. Can you, upon looking at a case of eggs which has been damaged in transit, tell whether the damage is at-

tributable to transportation or could be called non-rail damage?

A. Yes, I could tell that.

Q. Will you describe that? What is the difference?

A. This is only if the case shows external damage, naturally, and if the end is bashed in in any way we would assume that it was shipped in a car which had a jolt, or a jar.

Q. You have three exhibits, Mr. Winters, do you?

A. Yes, sir.

Mr. Matson: We would like to have these exhibits marked for identification. The first one is a Zenith Godley Co. exhibit and starts off with the marking, "Actual Claims Made to Railroad by above Consignee——"

[fol. 463] Commr. Mitchell: That will be marked Exhibit No. 32.

(Department of Agriculture Exhibit No. 32, Witness Winters, marked for identification.)

Mr. Matson: The second exhibit is a Zenith Godley exhibit, with the text starting off, "Exceptions to sound eggs——"

Commr. Mitchell: That will be marked Exhibit No. 33.

(Department of Agriculture Exhibit No. 33, Witness Winters, marked for identification.)

Mr. Matson: The third exhibit, No. 34, is headed "New York Mercantile Exchange".

Commr. Mitchell: That will be marked Exhibit No. 34.

(Department of Agriculture Exhibit No. 34, Witness Winters, marked for identification.)

By Mr. Matson:

Q. Will you tell us briefly what Exhibit No. 32 covers?

A. 32 is simply copies of our claims to the various railroads mentioned, taken from the RPIA form No. 20 that is submitted to the railroad for payment. On top of that, I have not included the labor or materials. I have just included the actual eggs.

Q. That represents the damage that was paid for by

the railroads and verified by the RPIA Inspector; is that correct?

A. Paid for in two instances, and three are still pending.

Q. I notice that the next to the last car on Exhibit 32 shows a date of October 24, 1929. I assume that is a typo-
[fol. 464] graphical error and should be 1949.

A. That is 1949.

Q. What is the connection between Exhibit 32 and Exhibit 33?

A. Exhibit 32 shows the number of eggs which was pulled out of the cases after being determined in bad order by our representative and certified to by the RPIA, the assumption being that after that reconditioning was done and the number of dozens noted, the balance of the cars was in good order; that is, every case then was delivered in good order, because this damage had been removed.

However, on Exhibit No. 33 we had the same cars inspected by the United States Department of Agriculture——

Q. As reconditioned lots, after damage was removed?

A. After damage was removed. And the inspection was made on the reconditioned cases.

Q. And where did that take place?

A. On the railroad dock, the same place where the eggs were reconditioned. The eggs had not been moved.

Q. And what do those certificates show?

A. We had five cars examined. You will notice the percentages, but they average to this: After reconditioning we accepted as good order and for our own account an average of 1.72 per cent stained eggs and an average of 2.2 per cent checked eggs in the case.

Q. Those stained eggs, could they have been originally
[fol. 465] stained eggs or was that fresh stained?

A. They could be originally or fresh.

Q. Were those certificates ordered for the purposes of this proceeding?

A. No, they were not. They were ordered—my company very rarely had eggs inspected because our movement is good and we do not have to have eggs inspected. However, we do have bad markets, and we had these eggs inspected for that reason, to use the facilities of the New York Mer-

cantile Exchange to sell the eggs. They were not made in any effort to find damage. They were made to find quality.

Q. As distinguished from that, what does Exhibit No. 34 show?

A. No. 34 is a series of five cars on which inspection was made on reconditioned cases moved under the auspices of the Department of Agriculture.

Q. Were they made for the purpose of use in this proceeding?

A. They were.

Q. Was your firm investigated by the investigator of the Interstate Commerce Commission, Mr. Winters?

A. Not to my knowledge.

Q. Do you know of any firms that were?

A. No, I do not.

Q. Do you know of any dishonesty in the matter of filing claims in New York?

A. I do not. And I do not see how it could occur. We file [fol. 466] our claims on the basis of a railroad representative's inspection, and in accordance with the forms he issues, and I do not see how there can be much dishonesty.

Q. Is it possible to pad the claims in New York?

A. It is impossible to pad the claims in New York.

Q. Do you ever ask the railroad to pay for a cracked egg which has been put into a case at origin?

A. We never have, and that is one reason we have had these inspections made, to prove that there are cracked eggs at origin, and there are still cracked eggs after the car has been reconditioned, and to the tune of the same amount or more than has been claimed.

Q. You mean in the same number?

A. That is right. We absorb that, we always have, and all we have ever claimed for is actual rail damage.

Q. If you knew that one of the shippers who sent eggs to you intentionally placed a cracked egg in a case, even within the tolerance permitted by the Departmental grades, would you continue to buy eggs from that firm?

A. We would contact that shipper immediately and advise him to stop it because it would spoil his grade mark of eggs. We are in business to sell eggs, and we generally sell on marks. If it gets around that his mark is not good,

we cannot sell them, so we do everything we can to advise the shipper to provide proper eggs.

[fol. 467] Q. The testimony of Witness Miller indicates that at origin cases are shipped containing 1.9 of checked eggs, which were found by candling and clicking the eggs. Do you believe that shippers intentionally pack that many damaged eggs?

A. No, I do not. I don't think they intentionally pack it because we have grades of eggs for that.

Q. Could the 1.9 per cent have been found by an inspection for damage such as on New York piers?

Commr. Mitchell: I do not think this witness can answer this question, or that it is of any value.

Mr. Matson: He is dealing with these shippers every day, your Honor.

Commr. Mitchell: I do not think that is material. Of course, we know that the shippers do not intentionally do it. We assume they do not.

Mr. Matson: If the Commission is willing to assume that——

Commr. Mitchell: I do not believe that is evidence of any weight.

The objection will be sustained as to the answer to that question.

By Mr. Matson:

Q. May I have an answer to the subsequent question, however, whether the 1.9 checks could be determined by an examination such as takes place upon the piers?

A. No, it could not.

Q. Has the rail service improved, insofar as your com-

[fol. 468] pany's shipments are concerned, within the last year or so?

Mr. Canny: What do you mean by "service"?

Commr. Mitchell: What is your question, Mr. Matson?

Mr. Matson: Whether there has been any improvement in the service of the railroads in handling this shipper's eggs within the past year, relating to damage.

A. Yes.

By Mr. Matson:

Q. There is less damage than there was a year ago?
A. Yes.
Q. How much less?
A. I would say, we have about 20 to 30 per cent less now.
Q. On a per car basis?
A. Per car basis.
Q. Does your company prefer to receive by rail?
A. We are forced to receive by rail.

Commr. Mitchell: Why?

The Witness: We do not have the facilities to handle three or four thousand cases at our place of business. We have to use a dock to do our business.

Commr. Mitchell: You do receive some by truck, don't you?

The Witness: Oh, 50 to a hundred cases only—a lot.

Commr. Mitchell: Are there claims on those?

The Witness: No.

By Mr. Matson:

Q. Do you buy any storage-packed eggs?

[fol. 469] A. We buy eggs that are packed according to the classifications, with new flats and fillers and new cases.

Q. Do you buy any eggs that have been in storage, after they have been in storage?

A. It is a bad question to ask. After this year we will never buy storage, but we have not, no.

Mr. Matson: That is all, thank you, Mr. Winters.

Commr. Mitchell: Cross examination.

Cross-examination.

By Mr. Knowlton:

Q. I understand these tests were made in your usual course of business by the Department?
A. Yes.
Q. Did you aid in selecting the packages to be tested?
A. I was not even present.

Q. And these tests were run on the entire car in accordance with the Department of Agriculture's method of testing?

A. No, these tests were made on what was left of the car after reconditioning. You see, when a car was being reconditioned there were so many cases set aside which we could accept and deliver, which we did. Then the cases we had inspected were the ones put in a pile to be sold in good order.

Q. Will you tell us why we recognize a checked egg as inferior?

A. Why?

Q. Yes.

A. Because it has a crack in the shell. That is not good [fol. 470] for an egg.

Q. What is the matter with that?

A. You are not allowed to put it in with the eggs when you sell at retail. It is against the law.

Q. Isn't it that it is a weak-shelled egg?

A. No, because we have had the same point ship us with all eggs good, with all good eggs.

Q. I understood you to say that when you found twelve or more good eggs in a case you made some adjustment?

A. It all depends on who does the complaining. We have to use a figure in adjustment.

Q. Does it go above twelve sometimes?

A. Yes.

Q. Where was this hump that you observed?

A. Croxton Yards, New Jersey.

Q. When were you over at Croxton?

A. I have been over there within the last two months.

Q. Did you see eggs being humped in the past two months?

A. Yes, sir.

Q. Were they in your cars?

A. No.

Mr. Knowlton: That is all I have.

Commr. Mitchell: Any further cross examination?

Mr. Reilly: May I ask one question?

Commr. Mitchell: Yes.

[fol. 471] By Mr. Reilly:

Q. You stated on direct examination, Mr. Winters, that you could tell whether or not a car had received rough handling in transit because the load had shifted at one of the ends or both ends. Would it be possible that that was due to faulty loading at origin?

A. I have been in these plants when the cars have been loaded, and I do not see how the cases could be in such a condition by just a man loading them.

Q. Is that the same car you saw at destination that you observed at origin?

A. No, I am speaking of knowing the operation at point of origin. When I am speaking, and I figure a car has shifted, I am talking about a case that is badly bashed in at the end. A slight dent, or something like that, I would not think much about.

Q. But it is possible, is it not, that if a car is improperly loaded the shift may be due to that, even though it received normal handling?

A. Eggs are not too fragile, and the cases are pretty good. So I would not say that improper handling at the point of origin would cause that damage. The shipper is interested in getting all the good eggs he can to the point of destination.

Q. I say is it possible that the shift in the load was caused by improper loading at origin?

A. It is possible in cases.

Mr. Reilly: Thank you.

[fol. 472] The Witness: However, our claims are filed under official classification, and any violation of that is under 120.

By Mr. Zearfaus:

Q. You say you have a lesser amount of damage claims now than in the past?

A. That is right. We find, in looking over the records of the past, that we had 600, and 300, and so forth.

Q. Didn't you say that your claims have been reduced since you made the reduction in the number of cases per car?

A. No, I did not say it was due to lower loading.

Mr. Zearfaus: Thank you, that is all.

By Mr. Canny:

Q. Mr. Winters, this humping of cars that you saw in Croxton Yards, was that in the east yard or west yard?

A. That was in the hump that is between Susquehanna and the main line railroad, as you come out of the tunnel.

Q. In other words, you do not know whether those cars are east bound or west bound?

A. I do not know.

Q. You also testified that the only reason you believed there were eggs was because there was a sign on the car which contained the word "eggs". In other words, you do not know whether or not those cars were empty and being sent back?

A. Having seen both sides of the car, there were seals on the door.

Q. Did you observe that?

A. Yes, I did. That is what made me look at it.

[fol. 473] Q. When did you say you were over there?

A. About two months ago.

Q. Were you with any representative of the Erie Railroad?

A. No.

Q. Did you get permission to go within the yards of the Erie?

A. No, I did not.

Q. It might be still possible they were empty cars, even though there were seals on them?

A. That is possible.

Mr. Canny: That is all.

By Mr. Zearfaus:

Q. You said you do not insist upon an inspection of a case of eggs merely because there is one cracked egg, and you also said that the other consignees pursue similar practices?

A. Yes.

Q. Do you know whether that is a fact, that they all pursue the same policy that your company does?

A. From talking to the men, yes. I have to assume that they are telling me the truth.

Q. From talking to the men?

A. That is right; the people who would file claims.

Q. But you have never been there to watch whether a consignee who finds one cracked egg in the top layer insists upon the inspector going through the entire case?

A. No.

[fol. 474] Mr. Zearfaus: Thank you.

By Mr. Knowlton:

Q. Did I understand you to say that on some of these shipments that there was Federal inspection at origin?

A. There were Western Weighing Bureau inspections.

Q. In adjusting claims do you ever refer to Federal inspections at origin?

A. Well, the only adjustment that would be made would be by the railroad. I m n, they would come back to us and say, "We disallow a certain percentage because of point of origin inspection." As far as the Federal Weighing Bureau at point of origin is concerned, that is not too easily procured in some instances.

Q. Do you ever procure it?

A. Not so far as I know.

Mr. Knowlton: That is all.

By Mr. McDonald:

Q. Mr. Winters, didn't I understand you to testify that up until a year or so ago your carload shipments came under the 600 case-lots?

A. Yes, under the ODT.

Q. And currently they are probably averaging approximately 400 cases to the car?

A. Yes.

Q. Doesn't that account largely for the difference in your claim experience, that today your cars have only two-thirds the former quantity they had?

[fol. 475] A. We still get 600 case cars, and we get 400 case cars, and we have claims on just as many 400 case cars as on the 600 case cars.

Q. Could you tell us what percentage of your shipments in the last year approximately were 400?

A. When the ODT order was rescinded?

Q. Yes.

A. I would say we dropped down to about 10 per cent.

Q. Ninety per cent of them were 400 case shipments?

A. Yes.

Q. Wouldn't that improve the claim situation?

A. It did not improve until about six months ago.

Q. And it was still related to a car basis rather than a case basis; isn't that so?

A. That is right.

Q. In your Exhibit No. 32, do I understand, taking the first shipment there of 384 cases in that car, you filed a claim for damage on the total of those four columns across?

A. That is right.

Q. Which, if I have added correctly, amounts to 270 out of 384?

A. That is right.

Mr. Matson: May I point out that the columns on t right are dozens rather than cases?

Mr. McDonald: That explains that. Thank you.

That is all, Mr. Winters.

[fol. 476] Commr. Mitchell: Thank you very much, Mr. Winters, that is all.

Mr. Matson: I would like to offer these exhibits, your Honor.

Commr. Mitchell: Is there objection to the offer of exhibits 32, 33 and 34?

(No response.)

Commr. Mitchell: They will be admitted.

(Department of Agriculture Exhibits Nos. 32, 33, and 34, Witness Winters, received in evidence.)

(Witness excused.)

[fol. 477] Mr. Matson: Mr. de Malignon, please.

CHARLES DE MALIGNON was sworn and testified as follows:

Direct examination.

Commr. Mitchell: Will you give your name to the reporter?

The Witness: Charles de Malignon, Seaboard Terminal & Refrigeration Company, Jersey City, New Jersey.

By Mr. Matson:

Q. What is your position with Seaboard Terminal?

A. Egg inspector.

Q. And what are your duties in regard to that?

A. Well, the duties are to oversee the entire operation of the egg department, including the receiving and delivering of eggs tendered for storage.

Q. Seaboard Terminal and Refrigeration Company is a storage company, is it?

A. Cold storage refrigeration, yes.

Q. Where do the inspections take place?

A. At the receiving platform.

Q. At your warehouse?

A. At the warehouse.

[fol. 478] Q. Will you describe just how this is gone about? How do you inspect the eggs there?

A. Well, when railroad ladings are received, in conjunction with the RPIA Inspector, during the course of a loading, I proceed to withdraw or select a sample from the doorway area of the car and succeeding samples from the midway sections between the doorway area and the bunker areas of the car.

Q. Is that down on the dock?

A. That is in the process of unloading, outside of the car door.

Q. At the dock?

A. At the dock, yes.

Q. And can you tell, when you select these particular cases, whether they are going to have damage in them?

A. No, sir.

Q. You cannot tell?

A. Unless it may be showing external evidence of damage, leakage, and so on.

Q. But if the case is apparently sound, by visual inspection of the outside of it, you cannot tell whether there is damage inside?

A. No, sir.

Q. Are your cases which have damage in them, are they reconditioned at the piers or at your warehouse?

A. Well, the ladings which subsequently prove to warrant a further inspection are always reconditioned at the [fol. 479] warehouse unless the consignee should elect to remove as is, without exception.

Q. In the reconditioning of these cases at the warehouse do you use a candling lamp?

A. No, sir.

Q. Do you click the eggs?

A. No, sir.

Q. Is it possible in your inspection there to remove blind checks?

A. It is not.

Q. Do you have an arrangement with the railroad which permits you to recondition these at the warehouse?

A. I wanted to add to your last question, we do not enter into the reconditioning. It is the consignee's representatives who select the people, the agents to do that work for them.

Q. But that is done at your warehouse?

A. At the warehouse.

Q. And you have seen it done there?

A. Yes, sir.

Mr. Matson: I believe that is all, Commissioner.

Commr. Mitchell: Is there any cross examination?

Mr. Knowlton: I have just one question.

Cross-examination.

By Mr. Knowlton:

Q. Do you customarily decide where the damage occurred to the eggs?

[fol. 480] A. Where the damage occurred? That is, within the lading, itself, or the actual damage to the visibly damaged eggs?

Q. Well, the actual damage to the visible, damaged eggs.

A. Well, we endeavor to do that on occasion. We render an opinion, but that is all. The fact remains that we are trying to see that after the given storage period we are able to deliver a good order package.

Mr. Knowlton: That is all, thank you.

By Mr. Canny:

Q. What is the full name of your company?

A. Seaboard Terminal & Refrigeration Company.

Q. You are located in Jersey City?

A. Yes, sir, 215 Coles Street, Jersey City, New Jersey.

Q. Aren't you the consignee, in a great many cases, of eggs?

A. No, sir, we are not.

Q. Never?

A. No, sir.

Q. Are you a consignor?

A. No, sir.

Q. This inspection is done right there at the warehouse, is it not?

A. Yes, sir.

Q. The Erie Railroad also has a freight terminal right there? Has it not?

A. Within the vicinity.

Q. Just across the street?

[fol. 481] A. No, on the Avenue, Pavonia Avenue.

Q. How far away?

A. Oh, about half a mile.

Q. Are you on a private siding there?

A. We are, sir.

Q. Can you tell us how your claims compare this year, say, with a year ago or two years ago, on eggs?

A. Well, I have not exact figures. We could readily obtain them for you. But I am under the impression that we may be slightly lower this year than the past two years.

Q. Is that on a per case basis or per car basis?

A. Per car.

Q. Wouldn't that be due to the fact that you now have fewer cases per car than you had two years ago?

A. That may be the case.

Q. Do you know of any reason why it might be other than that?

A. Well, the traffic may have received more beneficial handling than in previous years.

Q. Do you know of any practice that the railroads have undertaken that has changed this year over last year or the year before?

A. I do not.

Q. You said you were not the consignee or the consignor at any time. Are you the notified party?

A. No, we are not the notified party. We are in care of.

[fol. 482] Q. How do you select the package to open?

A. They are taken at random throughout the lading, as I said originally. A certain percentage of the legal inspection from the doorway of the car, the intermediate points between the doorway area and the bumper area.

Mr. Canny: That is all.

Mr. Matson: I have some questions on redirect examination.

Redirect examination.

By Mr. Matson:

Q. Are you in a position over there to observe the operation of the railroad in the classification yards?

A. Not too well, no.

Q. Can you tell whether or not there is any rough handling over there by humping cars?

A. No, I cannot.

Mr. Matson: That is all, Commissioner.

Commr. Mitchell: That is all, thank you.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Matson: Mr. Redding, please.

JOHN REDDING was sworn and testified as follows:

Direct examination.

Commr. Mitchell: What is your name?
The Witness: John Redding.

By Mr. Matson:

Q. Where do you work, Mr. Redding?
[fol. 483] A. Merchants Refrigerating Company in New York City.
Q. What is your position with that company?
A. Egg inspector.
Q. How long have you been doing that work?
A. Approximately 30 years.
Q. Is this Merchants Refrigerating Company a storage company?
A. Cold storage warehouse.
Q. The same as the Seaboard Terminal & Refrigeration Company?
A. That is right.
Q. Do they operate in substantially the same way?
A. I do not know how the Seaboard Terminal & Refrigeration Company operates. We store eggs in cold storage.
Q. With regard to claims on eggs, then, tell us what your experience has been and how the eggs are handled under your direction.
A. When eggs are received on a railroad car at our siding we inspect the carload for damage with joint inspection of the representative of the railroad. We notify the consignee of the outcome of that inspection.
Q. You say the eggs are delivered at a siding at your warehouse?
A. Yes, sir.
Q. And you do not take delivery of any eggs, then, in the piers in New York?
A. Occasionally we have a load consigned to us on the pier.
Q. But the general rule is that you get them delivered [fol. 484] by a sidetrack at your warehouse?
A. Yes, sir.

Q. When you go through these cars to find out if there is any damage in them, how do you determine which cases to look at?

A. There is no rule for determining the case that you look at.

Q. Do you do it at random?

A. The ruling calls for an inspection to raise the covers of twenty cases of eggs from the load, and we do that.

Q. Which cases do you pick out?

A. There is no rule on which cases you pick out, and I do not follow any set rule on the cases I pick out. The loads are not all the same.

Q. Can you tell from the outside of the case whether there is a damaged egg inside of it, unless there is any external evidence of damage on the case?

A. No, sir.

Q. Do you file claims on behalf of anyone?

A. No, sir.

Mr. Matson: That is all, thank you.

Commr. Mitchell: Cross examination?

Mr. Knowlton: I have no questions.

Examination by the Commissioner.

By Commr. Mitchell:

Q. Did you store any eggs over there this year? Did your company store any eggs this year?

A. The company does not store; we stored eggs this year for people.

[fol. 485] Q. Is your storage as heavy this year as it was a year ago?

A. No, sir, we did not have the available space to accommodate the storage of so many eggs this year.

Commr. Mitchell: All right; thank you, sir.

(Witness excused.)

Mr. Matson: I call Mr. Schilt.

Commr. Mitchell: Do you want to put him on now?

Mr. Matson: I would like to have him identified.

Commr. Mitchell: All right.

Mr. Matson: I understand Mr. Schilt will take the stand and be sworn, and distribute his exhibit and prepared testimony, and that it will be copied into the record as if read, and the cross examination will be postponed until a subsequent hearing, probably in Washington.

Commr. Mitchell: Did everybody hear the statement made by Mr. Matson?

Is that satisfactory to the railroads?

Mr. Knowlton: Do we understand that the written testimony is subject to objection, the prepared testimony?

Mr. Zearfaus: We do not know what is in it, sir.

Commr. Mitchell: You would have no objection to the prepared testimony being subject to objection at the next hearing, Mr. Matson?

Mr. Matson: That is right, sir.

Commr. Mitchell: As I understand it now, the railroads [fol. 486] have no objection to this procedure which has been outlined by Mr. Matson.

Mr. Zearfaus: Subject to the fact that we may have the right to object to any portion of it and ask that it be stricken, at the next hearing.

Commr. Mitchell: If your objection is sustained, yes.

Mr. Zearfaus: Yes, sir.

Commr. Mitchell: Do any of the other parties, than the railroads, have any objection to the procedure outlined by Mr. Matson?

(No response.)

Commr. Mitchell: What about the Fairmont Foods Company?

Mr. Krebill: The Army has no objection.

Commr. Mitchell: What about the Fairmont Foods Company? Do you have any objection to the procedure outlined by Mr. Matson? Of course, we are going to try to reach you today.

Mr. Dell: No objection.

Commr. Mitchell: How about Armour & Company, and Wilson & Company, and Swift and Company?

Mr. Kenny: No objection.

Mr. Blanchard: No objection.

Mr. Staley: No objection.

Commr. Mitchell: I understand now that there is no

objection by any party that has entered an appearance here and that is here today?

[fol. 487] With that understanding, we will proceed.

Mr. Matson: I call Mr. Schilt.

LEON SCHILT was sworn and testified as follows:

Mr. Matson: Mr. Commissioner, may we have this exhibit marked for identification?

Commr. Mitchell: It will be marked for identification Exhibit No. 35.

(Department of Agriculture Exhibit No. 35, Witness Schilt, marked for identification.)

Direct examination.

By Mr. Matson:

Q. Will you please state your full name for the record, Mr. S-hilt?

A. My name is Leon Schilt.

Q. How do you spell the last name?

A. S-c-h-i-l-t.

Q. Have you prepared an exhibit for presentation at this proceeding, and has it been identified as No. 35?

A. That is correct, sir.

Commr. Mitchell: The testimony of Mr. Schilt, under the stipulation, will be copied into the record and the parties will have a right to cross examine him at the next hearing, wherever it is held, and make objections to the direct testimony if they so desire.

Mr. Matson: I will offer the exhibit in evidence subject [fol. 488] to any ruling.

Commr. Mitchell: The exhibit will be No. 35 and the ruling will be reserved subject to objections.

The Witness: My name is Leon Schilt. I am a Transportation Specialist employed in the Transportation Rates and Services Division of the Transportation and Warehousing Branch, Production and Marketing Administration of the United States Department of Agriculture. My business address is Washington, D. C. I have held this position for more than six years, specializing primarily in trans-

portation problems affecting the dairy and poultry producers of the Nation.

Prior to my connection with the Department of Agriculture I was Terminal Manager for a Class I freight forwarder, which position I held for approximately three years, and from 1928 to 1938 inclusive I was engaged in traffic and transportation work by a co-operative sales organization specializing in the sales and distribution of several thousands of carloads and truck-loads of eggs and poultry annually. I am also a graduate of the Academy of Advanced Traffic, New York City, where I completed a course in Traffic and Transportation Management and Practice and Procedure before the Interstate Commerce Commission.

I have been delegated to appear before the Commission in this proceeding to represent the Secretary of Agriculture. The Secretary of Agriculture is interested in the issues involved in this proceeding because of two Acts of [fol. 489] Congress: (1) Section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291), which authorizes the Secretary to appear and participate in actions before the ICC involving rates, charges, tariffs, and practices relating to the transportation of farm products affecting the public interest; and (2) Section 203, paragraph (j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622), which directs the Secretary to "assist in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products." The instant proceeding is an investigation on the Commission's own motion to determine the reasonableness and otherwise lawfulness of the special regulations governing descriptions, marks, inspection and delivery, and the handling of claims thereunder, in connection with the transportation of shell eggs by railroads, as published in Note 5 of Supplement 2 to the Consolidated Freight Classification No. 18, Agent A. H. Greenly's I.C.C. No. 62, effective since July 24, 1948. By application of these special regulations, etc., as will be shown in detail later, there results certain rates, charges, tariffs, and practices relating to the transportation of shell eggs affecting the public interest and for this reason the Department of Agriculture's objective in this proceed-

ing is to assist the parties affected in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for shell eggs, which action, [fol. 490] we believe, comes within the purview of both the authorities cited.

It is also the Department's objective in this proceeding to place in the record facts which we believe may be of material aid to the Commission in its judgment of the issues and in its endeavor to make findings in the premises and prescribe such just, reasonable, and otherwise lawful rules, regulations, and practices as the facts and circumstances shall appear to warrant. These facts are as follows:

As will be shown in detail later, eggs are produced and shipped via railroads from, to, and within practically every state in the Union and by reason of their movement in interstate commerce are subjected to the ratings, rules, and regulations applicable to freight traffic covered by tariffs governed by the Official, Southern, Western, or Illinois Classification, as such tariffs may specify. Tariffs containing class ratings, exception rates, and/or commodity rates in effect and applicable on shell eggs are governed, according to territorial movement of the shipment, by any one of the four classifications. Therefore, in effect, the Consolidated Freight Classification, which comprises all classifications, has Nation-wide application. Consequently, the rates, charges, and, when the occasion warrants, loss and damage claim settlements on shipments of eggs by rail, are conditioned upon compliance by egg shippers with the rules and regulations contained in the Consolidated Freight Classification.

[fol. 491] At this particular point it may be well to state for the record that the Department is cognizant of the fact that the Commission does not have jurisdiction over damage claims, as such, but does have jurisdiction over practices of the carriers and their tariff rules. We therefore seek the aid of the Commission in having established, in connection with the rules, regulations, and practices under investigation in the instant proceeding, such rules and regulations which will be consistent with its statutory obligation and all parts of the Interstate Commerce Act.

I have prepared an exhibit consisting of 57 pages which

I now ask to be identified by number. Pages 1 and 2 of Exhibit No. 35 consist of the title page and Index of Contents, respectively. Pages 3, 4, and 5 consist of a verbatim reproduction of the Consolidated Freight Classification's Note 5 containing "Special Regulations governing descriptions, marks, inspection and delivery of eggs and the handling of claims thereunder" prior to and effective since July 24, 1948.

Beginning on page 3, the rules and regulations shown under Column 1 were those in effect prior to July 24, 1948, and for the most part have been effective since July 15, 1919, when they were published to comply with the Commission's findings in I.C.C. Docket No. 10012—National Poultry, Butter, and Egg Association, et al. v. New York Central Railroad Company et al., 52 ICC 47, decided January 21, 1919. At no time since the special regulations were [fol. 492] established have they been attacked or involved in a proceeding before the Commission as being unsound, unreasonable, or unworkable. At various times the rules and regulations were amended, which amendments did not alter or change the basic rules and regulations as set down by the Commission in Docket No. 10012.

The Rules and Regulations shown under Column 2 are those which were published in Supplement No. 2 to Consolidated Freight Classification No. 18 and permitted to become effective on July 24, 1948, over the protests and requests for suspension by interested parties, including the Department of Agriculture. Our purpose in reproducing the two columns on a single page is to assist the Commission in making an easy comparison of the old and new rules and regulations. Underscoring was supplied to indicate the changes from Column 1 to Column 2. The broken lines in Column 1 denote deletions in whole or in part. The solid lines in Column 2 denote additions in whole or in part. The words capitalized in Column 2 place emphasis on the wording which changes the effect of the prior regulations in Column 1 and which, we believe, cause departures from the meaning and intent of the regulations as set down by the Commission in Docket 10012. Our belief is based upon the following: According to lines 12 through 24, under both columns, shippers of eggs shall be required to note on ship-

ping order and bill of lading, the character of the shipment, [fol. 493] particular identification marks, if any, and the number of cases not packed with 30 dozen eggs.

It will be noted in looking down both columns that the first important change is on line 14. "Rehandled current receipts" were deleted from the prior rules and in the current rules the words "or graded" are shown in lieu thereof. This substitution of wording is the first radical departure from the originally published four general transportation characters of shipment as set down by the Commission in Docket 10012, namely:

1. Current Receipts
2. Rehandled Current Receipts
3. Rehandled and Repacked Current Receipts
4. Storage Packed.

Basically, all eggs when originating in the nest, in their uncandled and ungraded stage (run-of-the-nest-eggs), including blood spots, cracks, checks, and dirties, also ranging in sizes from Peewee class up to the Jumbo class, are "current receipts." Through the process of segregating eggs according to size and removing the cracks, checks, and dirties, the "current receipts" lose their identity as such and are then "rehandled current receipts."

When "rehandled current receipts" are packed in new cases with new flats and fillers they lose their identity as "rehandled current receipts" and then are "rehandled and repacked" current receipts.

[fol. 494] Storage-packed eggs are those which, in addition to being segregated for size and the removal of cracks, checks, and dirties, are generally candled for quality grading and for the removal of blood spots, blind checks, and other shell defects not visible to the naked eye and packed in new cases with new flats and fillers.

Very few eggs, if any, were shipped and billed under the character of "rehandled current receipts." The elimination of this description from the prior regulations makes little or no difference because this description was intended to apply only on "rehandled current receipts" which were not packed in new cases with new flats and fillers. The liberal provision in the tariff which originally stated that

"Cases, fillers and flats shall be considered new and standard when in good condition and moving in direction of market from point first used" obviated the necessity for shippers to describe their eggs packed in second-hand cases as "rehandled current receipts."

The character or term "graded" following "current receipts" shown on line 14 under Column 2 appears quite ineffectual in and of itself and is given some measure of sanctity by the qualifying explanation shown in the last three lines of Column 2. But in effect the term "graded" is a synonym designed to substitute for the billing terms of "rehandled and repacked" or "storage packed" egg when such eggs are actually, and/or are considered packed [fol. 495] in new standard cases with new flats and fillers. Under the rail conditions of acceptance which will be explained later, if the term "graded" is not used on the shipping order or bill of lading by certain shippers, such shippers could be rightfully accused of mis-billing their shipments of eggs and be subjected to stiff penalties if such was their intent because the "Elkins Act" gives the published and filed tariff provisions the effect of lawfulness.

It will be noted in lines 25 to 28 inclusive of Column 1 that the prior rail explanation of the term "rehandled and repacked eggs" has been changed in part when it is compared with the current explanation as shown under Column 2 in lines 25 to 36 inclusive.

The Commission's attention is directed to the capitalized wording in lines 25, 26, and 27 of paragraph (a) reading "Only . . . at point of origin of the rail shipment." By the inclusion of these words in the tariff provisions, it must be recognized that the carriers are exceeding their proper functions in their endeavor to exercise some control over strictly commercial practices which have absolutely no bearing on nor affect in any way the transportation of the commodity which the carriers hold themselves out to transport. The "rehandling" and "repacking" of eggs are strictly commercial practices, as indicated in lines 30 and 31, and are not in any way a part of transportation as the term "transportation" is spelled out in Section 1 of the [fol. 496] Interstate Commerce Act. Eggs that have been rehandled by the process of eliminating broken, cracked and

checked eggs and eggs stained from broken eggs and then packed or repacked in new cases with new flats and fillers at points other than "only at point of origin of the rail shipment," under these provisions cannot be billed under the term heretofore used to indicate the commercial condition of the package and contents. Under the prior rules as originally set down by the Commission, the character of the eggs at the time and place tendered to the carriers was the controlling factor of acceptance and billing for transportation. The time and place of the commercial practice of "rehandling and repacking" eggs by producers, packers, shippers, or warehousemen are not directly nor remotely related to the receipt, handling, transportation and delivery of property, as will be shown in detail later.

In the prior rules shown under Column 1, no attempt had ever been made by the carriers to publish or define the meaning of "storage packed eggs." It is logical to assume that due recognition was given by all concerned to the commercial aspects involved in preparing for rail shipping a case of eggs of that particular character. Notwithstanding its thoroughly understood meaning for almost three decades the carriers, as shown under Column 2, defined the commercial term of "storage packed eggs" not to apply against its commercial aspects but to condition [fol. 497] the term to apply only when certain commercial practices are performed at packing plants and storage warehouses located at point of origin of rail shipment. In other words, a producer or shipper who eliminates from a case broken, cracked, and checked eggs and eggs stained from broken eggs, and after grading and sorting the sound eggs, packs them in new standard cases with new flats and fillers, at a place not recognized as a packing plant or storage warehouse located at point of origin of the rail shipment, cannot bill his eggs under their proper category as "storage packed" eggs. Such shippers must specify on the bill of lading and shipping order that the character of these shipments is "Current Receipts" or "Graded" as stated in paragraph (C) under Column 2 shown on lines 49, 50, and 51, because the commercial practices of "rehandling and repacking" or the "storage packing" of eggs,

respectively, were not performed "only at point of origin of the rail shipment."

Page 4 of Exhibit No. 35 shows the condition, or rather the privilege, under which an examination may be made by consignees under the supervision of carriers' representative to ascertain if any railroad damage is in the shipment upon its arrival at destination. Thus far on the record, too literal a translation of these conditions or privileges has been stated and I seriously doubt the necessity for changing what we believe to be the reasonable terms in Column 4 to those shown under Column 2, [fol. 498] unless, for clarification and consistency, one of the provisions now contained in Section 7 on page 5 of this exhibit is included in the prior rules. This provision will be discussed in detail later.

There are many kinds of damage that may exist in cases of eggs. Some kinds of damage are more serious than others in that the salability of the commodity is dependent upon the physical condition of the cases and contents. Judging from my own experience in examining cars or cases upon arrival an ascertainment of damage inspection is a search made for indications of leaking and or smashed eggs in the cases. This kind of breakage is detected in various ways. One way is by external evidence of damage to the case itself; another way is to look for egg albumen or yolks leading from the case, either through the slats in a wooden case or through the handholes in a fibre case. One does not have to be claim conscious nor have any special skill or intuition to detect the damage within these particular cases. The evidence of damage is there which no one can deny. Common knowledge gained through experience, and further borne out by Government tests, almost makes it a requisite for anyone inspecting a car of eggs for its condition upon arrival, to lift the lids of the cases of eggs located in the top and bottom rows at each end of the car. If the car was subjected to abnormal rough treatment enroute, these particular cases in the positions just mentioned would contain [fol. 499] the most damage of any cases in the car. Because most cars load 7 and 8 rows across the width of the car there is available 28 to 32 cases out of which consignee or his representative may choose any 20 cases.

In lifting the lids of the 20-case sample, very little, if any, attention is paid to a few checked or cracked eggs that may be noted, if this particular kind of shell damage is not concentrated in any particular part of the case. However, smashed or leaking eggs cannot be by-passed even though they may be few in number. Eggs that are smashed and leaking ruin the flats and fillers and stain the inside of the case, consequently requiring the case to be reconditioned and put in salable order. One or two eggs thoroughly smashed within the case will create a horrible mess which must be cleaned up before that case can be sold. For the reason that it is impracticable to pick up smashed eggs and pack them in a case, it is understandable that this particular kind of damage occurred after the case was packed at origin and before the time and place where the case was examined at destination. It is not practical for any packer of eggs to place a leaker in a case, because it would only ruin the packing material and detract from the salability of the case of eggs. It is not a common practice therefore to pack leakers in a case and if any are found upon examination at destination it is also understandable that such damage occurred after the case was packed at origin and before the inspection [fol. 500] where found. Checked or cracked eggs are not purposely packed in a case unless they are intended to be shipped as such and are so specified on the bill of lading. If any are included in a "rehandled and repacked" or "storage packed" case it could be attributable to the shell damage not being visible or discernible to the naked eye at the time they are inadvertently packed. This particular kind of shell damage may be considered normal damage, as distinguished from transit damage. This shell damage, as it leaves the places where packed, is not the damage which is visible in the usual destination inspection under the supervision of carriers' representative. It can only be found if the eggs are candled and/or clicked together. But this kind of examination, candling and/or clicking, is not permitted by the Railroad Perishable Inspection Agency inspectors or under the supervision of other railroad representatives when the consignee or his representative is making an inspection for condition upon arrival at the respective rail destination terminals or in

the course of reconditioning rail damaged shipments of eggs.

During these examinations transit breakage can easily be distinguished from normal breakage because it will be found confined to more than one egg in the rows at the ends of the cases or in the rows adjacent to the center partition of the case. The tips of the fillers at the edges of the cases where the damage is found generally are folded flat against the filler itself and this appearance con- [fol. 501] firms the fact that the smashed or leaking eggs within those fillers experienced an impact force undoubtedly brought about by improper switching and/or abnormal rough handling enroute.

Normal damage, on the other hand, when and if found in the case, is shell-damaged eggs which inadvertently have been placed in the cases and are not confined to any one part or location within the case. An isolated cracked or checked egg may be in the top, middle, or bottom layer and it may be found on either side of the case.

It will be noted in line 2, under Column 1, that the privilege of lifting the lids of a representative sample, under the supervision of carrier's representatives, applies to all characters of shipment. There is no provision for treating any particular character of shipment differently than any other. Under Column 2, however, it will be noted that Section 2 is now published in two parts, part A and part B. Part A, as shown on line 3, applies against "rehandled and repacked" eggs or "storage packed" eggs, and part B, as shown on lines 26 and 27, applies against "current receipts" or "graded" eggs.

The principal difference between both parts is that in connection with cases of "current receipts" or "graded" eggs the damage therein must be more than 5 per cent of the contents before a receiver is permitted to examine any additional cases for damage or before such cases may be set aside for reconditioning.

[fol. 502] In its consideration of this provision the Commission is reminded of the fact that, as previously shown, the terms of "current receipts" or "graded" eggs now apply against "rehandled and repacked" and "storage packed" eggs when the commercial practice of rehandling and repacking or storage packing the eggs has been per-

formed other than "only at point of origin of rail shipment."

The ambiguity of the provisions shown in lines 38 to 48, inclusive, is very confusing because no definition is made of the term "damage" particularly when it is supposed to be considered percentagewise in the examination for condition upon arrival. With the exception of cases showing external evidence of damage, only a top layer examination of the sample cases is permitted. Line 38 reads "if such examination shows five per cent (5%) or less damage," etc. This limitation could have many interpretations such as:

5 per cent of the 20-case sample	1 damaged case
5 per cent of the top layers of eggs	3.6 damaged eggs
5 per cent of the total contents of a 30-dozen case	18 damaged eggs
5 per cent of the total number of dozens in the 20-case sample	30 dozen damaged eggs

In applying the 5-per cent tolerance, however, the carrier's representatives consider the case as the unit and 5 per cent of a case containing 360 eggs is 18 eggs.

Rail damage to eggs is found in various stages of dam- [fol. 503] age, such as smashed, leaking, cracked, checked eggs and eggs stained from other broken eggs. Stained eggs in and of themselves are not considered by consignees as rail-damaged eggs for claim purposes unless there are within the case shell-damaged eggs which caused the stains. Nothing, however, is contained in the percentagewise restriction to allow for consideration of damaged containers or packaging material (flats and fillers) that may be ruined from rail-smashed eggs and under these provisions, if the 5 per cent is to apply against the total number of eggs within the case, consignee has no recourse against the carriers if as many as 18 shell-damaged eggs ruined the flats and fillers and also stained not only the case within which the rail-damaged eggs are contained but also the cases adjacent thereto and thereunder.

Stained cases should not be confused with "cases showing external evidence of damage" because the provisions in connection therewith apply only to "damaged eggs within the case not disclosed by top-layer inspection" as shown on lines 11 to 14 inclusive and on lines 34 to 37 inclusive under Column 2.

A damage examination privilege or a restriction applying only in connection with the number of broken eggs within a shipment, case, or layer, in my opinion, is about as reasonable as establishing a damage examination restricted to a percentagewise basis of the number of cans of paint or the number of bottles of ink that may be broken in their respective shipments.

[fol. 504] In accordance with the provision shown on lines 42, 43, and 44, if examination under supervision of carrier's representative, discloses more than five per cent (5%) damage, consignee is allowed to make further examination and to set aside for a joint inspection all cases containing more than five per cent (5%) damage. Notwithstanding the fact that the purpose of a joint examination by carrier's and consignee's representatives is to ascertain, in such examination, the rail shell damage as distinguished from normal damage, if any, the controlling factor in this provision is the number or percentage of shell-damaged eggs found and not whether such damage was caused by railroad handling. The same controlling factor is present in lines 38, 39, and 40, related to damage of 5 per cent and less, even though some cases may be thoroughly saturated and dripping egg whites and yolks all over the place of inspection. The effect of these examination provisions is to disclaim responsibility for damage to as many as 18 eggs in every case, which damage may have been due to negligence on the part of the carrier.

Incidentally, there is another very important fact that has not, I believe, been brought out on the record by other witnesses and that is, old breakage is distinguished from fresh or recent breakage by the advanced degree of coagulation of the exposed egg whites and yolks. Experienced inspectors, either rail or consignee, in the course of an examination for condition upon arrival, know [fol. 504-A] by the dry or wet condition of the flats and

fillers and the exposed egg whites and yolks, the approximate length of time between examination and when such breakage occurred. It is generally conceded that when a car of eggs has been in transit for about four or five days and the damage noted is still in the liquid stage with very little, if any, indication of coagulation or drying out, such damage occurred within a matter of hours. This observation, together with distinguishing concentrated rail, or what may be termed "mass" damage, from normal damage, as previously explained, eliminates all doubt in determining responsibility for damage.

The remainder of the Special Regulations involved in the instant proceeding is shown on page 5. In order to be consistent in showing the prior rules under Column 1 and the current rules under Column 2, we have reproduced Column 2 even though the wording thereunder is identically the same as that under Column 1.

The Commission's attention is directed to Section 6, beginning on line 27, under either column. This provision, otherwise referred to as the 5-percent tolerance rule, has been in effect without a single change in wording since it was first published in Supplement 33 to Official Classification No. 44, effective July 15, 1919. It was designed primarily at the suggestion of the Commission in Docket 10012, to apply against shipments of "current receipts" and "rehandled current receipts" (the latter not being [fol. 504-B] packed in new cases with new flats and fillers). The remaining characters of shipment, such as "storage packed" eggs, "storage packed dirties" and "rehandled and repacked" eggs, are excepted from this rule, as shown on lines 27, 28, and 29.

[fol. 505] By referring back to page 3 and reviewing lines 25, 26, 27, 37, 38 and 39, and also paragraph "C" on lines 49 and 50, the subterfuge employed or the concealed motive is evident as to why the carriers expressly prohibited shippers from noting on the shipping order and bill of lading the character of certain egg shipments according to their commercial pack. In connection with the commercial practice of rehandling and repacking eggs other than only at point of origin of the rail shipment or storage packing eggs which have been graded and sorted at other than packing

plants or storage warehouses also not located at point of origin of the rail shipment, it can be seen that when such shipments are billed as "current receipts" or "graded" eggs upon tender to the railroads for ultimate transportation, instead of "rehandled and repacked" or "storage packed" eggs such shipments will be subjected to the 5-per cent tolerance rule. This limits the carriers' liability to only such damaged eggs in excess of 18 in any one case even though investigation may develop carriers' liability.

It can also be seen, therefore, that the tying-in of one rule to conform to the provisions of another rule, was done by the carriers as a matter of convenience rather than as a matter of fact. This statement is borne out by the fact that at the time the new rules were adopted, published, and made effective on a Nation-wide scale the carriers had not established factual data that the 5-per cent damage toler- [fol. 506] ance reasonably and fairly reflected the average of the damage that would be found, if any, in connection with such shipments moving under such circumstances and conditions from the various principal rail points of origin in all regions of the country. Under these circumstances, in my opinion, there does not seem to be any justification for requiring a particular shipper to absorb a damage tolerance on a particular shipment packed under certain conditions based upon a damage tolerance arrived at by a process of unification, if that damage tolerance does not fairly and properly reflect the actual damage within the shipment as it is being shipped by himself and by his competitors from the same general region.

The attention of the Commission is now directed to Section 7 of page 5, under either column beginning with line 43. It will be noted that this particular provision reads: "No expense incurred by consignee in the ascertainment of damage will be allowed." In my opinion, the Special Regulations would take on a greater hue of consistency if this provision was lifted from Section 7, item 14587-A, which item is related to adjustment of damage claims and in lieu thereof placed in Section 2 of item 14570-A shown on page 4 of Exhibit No. 35 which contains the privilege of examining eggs under the supervision of carrier's representative for the purpose of ascertaining whether or not the shipment arrived at destination in good order.

The provision dealing with the "ascertainment of dam-
[fol. 507] age" should be considered as separate and distinct from the procedure of reconditioning, and which in reality is the determination of the extent of damage "for claim adjustment." In fact, a line of demarcation should be drawn in the rules to clearly distinguish what is meant by each term. Our attention has been directed to the construction that the carrier's representatives have placed upon the first term and how it is applied in connection with evaluating the measure of damage, and the verification and recommendation for payment of damage claims. It may be well to reiterate at this particular point that the Department is aware of the fact that the Commission does not have jurisdiction over damage claims, as such, but does have jurisdiction over carriers, their practices, and their tariff rules. Also, because of the fact that this investigation is conducted by the Commission with a view to making such findings in the premises and prescribing such just, reasonable and otherwise lawful rules, regulations, and practices, as the facts and circumstances shall appear to warrant, we believe that all the claim settlement practices of the carriers, based upon their own interpretation of their rules, should be directed to the attention of the Commission for correction and for the avoidance of misconstruction and/or misapplication by carriers in the future.

For example, a car containing 600 cases of eggs arriving at a destination terminal showing indications of having been [fol. 508] subjected to excessively rough handling enroute, with cases and contents at the center and at both ends of the car smashed, generally requires a complete and thorough examination of all cases and the removal therefrom of all badly damaged eggs, particularly if such shipment is consigned to a warehouse for storage. In such instances, carriers' liability is not difficult to determine, and in the course of an "ascertainment of damage" inspection the carrier's representative supervising the inspection will allow the consignee or his representatives to lift the lids or open the cases in the entire shipment and make only a top-layer inspection. Consignee or his representatives are not permitted to look for damage beyond the top layer except where cases show external evidence of damage. This carrier practice of denying the right of consignee or his repre-

sentative to inspect eggs other than in the top layer of cases which show no external evidence of damage while other cases in the same shipment show external evidence of damage and exact from consignees or their representatives good-order or apparent good-order receipts, on the basis of only a top-layer inspection, in effect, forces from the consignee or his representatives an apparent admission with regard to the shipment which may not be in accord with the facts and which may subsequently be used to prevent the collection of lawful claims.

If no damage is found in the top layer, it is presumed by carrier representatives that the remainder of the load is in [fol. 509] good order. However, it has been my particular experience in examining eggs, in connection with U. S. Department of Agriculture test shipments, that that presumption is in error. It has been my experience to find no damage in the top layers of some cases, but in those same cases in layers other than the top, I have found damage running from 2 to 18 eggs per case. This damage was transit damage because the eggs were specially packed by Government inspectors whose sole duty it was to remove all eggs with unsound shells by candling and clicking the eggs inspected at origin in those particular shipments.

In the course of making a destination inspection under supervision of carrier representatives the joint inspection may reveal damage in the top layers and within other layers of cases showing external evidence of damage in, for example, 300 of the 600 cases of eggs in the shipment. Notwithstanding the determination of carrier's negligence at the outset of the inspection, by reason of the substantial volume of cases showing external evidence of damage, consignee's necessary expenses for labor incurred to lift the lids of the entire shipment are not allowed in the claim settlement and consignees therefore cannot collect the full measure of damage sustained. Claims must be amended or reduced proportionately to the percentage that the damaged cases are of the total number of cases in the shipment.

Authority for this practice by carrier's representatives is based upon the aforementioned provision that "no ex- [fol. 510] pense incurred by consignee in the ascertainment of damage will be allowed." This is the carrier's practice despite the fact that if the car arrived at its destination in

good order no such labor expense would have been incurred by the consignee for lifting the lids or opening the 600 cases of eggs in the shipment. Moreover, when a shipment of eggs arrives at a destination terminal in a badly damaged condition and it is deemed advisable to inspect or repack the entire shipment, not all cases will show external evidence of damage, but the fact that a fairly large number do is sufficient in itself for consignees to take the necessary precautionary measures to avoid placing in storage broken and smashed eggs. Because fibreboard cases are somewhat moisture-resistant they will not, in all instances, show signs of containing smashed eggs, particularly if such smashed eggs are located in the bottom or lower three layers of the case. Unlike wooden egg cases, the fibreboard cases do not have the slats or openings through which seep the broken or smashed eggs, and it is therefore difficult to detect any breakage in such cases unless they are carefully examined in the course of repacking to determine the extent of damage. When, in connection with the examples just cited, the negligence on the part of the carrier is evident and consignees as a result incur labor expenses to repack the entire shipment or incur other expenses incident thereto, I do not believe that there should be in effect any rule, provision, or [fol. 511] practice which tends to prevent or disallow the recovery of such incidental but necessary expenses, because such expenses would not have accrued on the shipment if the shipment was delivered to the consignee at destination in good order or in the same apparent good order as when it was tendered to the carriers for transportation at point of origin.

Lines 44 to 47 inclusive of Section 7 on page 5, shown under either column, provides that "in case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier." In connection with this provision the Commission's attention is directed to the fact that in case of carrier's liability, the carriers limit the recovery of incidental expenses by consignees to only actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage.

For the same reasons as those cited in connection with the

"ascertainment of damage" provision, it can be seen how this provision also disallows the recovery of incidental and necessary expenditures which otherwise would not have accrued on the shipment, because the damaged cases and contents showing damage are only part of the full measure of damage suffered by the consignees. By "full measure of damage" we mean the difference between the actual destination value on date of arrival if the shipment arrived in [fol. 512] good order, and the sum of the actual returns less all expenses paid for reconditioning and restoration of the entire bad-order shipment into salable condition.

In view of the aforementioned there appears to be much need for the Commission to prescribe new Special Regulations for the handling of claims thereunder or for it to lay down a set of principles to guide the carriers in their determination of the full measure of damages involved in a loss-and-damage claim on eggs when investigation thereof reveals carrier negligence, because the rates charged and collected by carriers for egg transportation are conditioned upon compliance with the Special Regulations in effect.

It is believed that the effects of the current regulations can be more amply demonstrated to the Commission by an examination of page 6 of Exhibit No. 35, which is an illustration representing egg transportation by rail. This illustration basically is typical of any rail point of origin and rail destination involved in egg transportation. It is not a hypothetical or theoretical situation. It is representative of rail points of origin and rail destination market terminals throughout the United States which are affected by the Special Regulations, because the Special Regulations here under investigation have Nation-wide application.

The rail point of origin is shown on the lower left side and the destination market is shown on the upper right side of the illustration. Within the circle indicating the corpo- [fol. 513] rate limits of the rail point of origin is shown the letter "A" which is indicative of a shipper, packer, or warehouse served by a rail siding. The letter "B" shown in the upper part of the rail point of origin indicates a shipper, packer, or warehouse located within the corporate limits of the rail point of origin but not served by a rail siding. The letter "C" shown within each small circle out-

side of the corporate limits of the rail point of origin is indicating of shippers, packers, and warehouses located adjacent to or at any point other than the rail point of origin. The truck symbols are used to indicate the movements of eggs by motor carriers from outlying points and from places not served by rail sidings, to the rail point of origin where the egg shipments are tendered to the railroads for transportation to rail destinations. The train of cars shown in the center of the illustration indicates the rail movement from the rail point of origin to the rail destination.

It can be seen at a glance just how the shippers, indicated by the letter "C," by reason of their locality, are affected by the rules previously cited as related to the commercial practice of rehandling and repacking or storage packing of eggs at other than the rail point of origin. In order for these shippers to acquire the same measure of protection for the recovery of damages resulting from carriers' negligence as that accorded the "A" and "B" shippers, the "C" [fol. 514] shippers would have to change their place of business or method of operation and arrange in some way to rehandle and repack or storage-pack their shipments of eggs intended for rail transportation at the rail point of origin. Under the circumstances illustrated, this perhaps could be accomplished in several ways:

The off-rail shippers would have to establish themselves at the rail point of origin by (1) building or renting a place of business within the corporate limits of the rail point of origin; (2) hire or contract with some commercial organization located within the corporate limits of the rail point of origin to perform the required commercial practice; or (3) attempt to perform the commercial practice at the railroad station if the space permits, or on the team tracks in the car in which the shipment will ultimately move.

In all instances, besides the impracticability of carrying out any one of these three alternatives, the cost of meeting the required conditions would be prohibitive even if attempted. The prevention would cost more than the cure and the only alternative left to off-rail shippers is to comply with the carriers' transportation conditions of acceptance and describe on their bills of lading that their rehandled and repacked or storage-packed eggs are "current receipts"

or "graded" eggs, thus absolving the carriers from paying claims for any damage up to 18 eggs in any case even though such damage may be the result of carrier negligence.

[fol. 514a] In some production and shipping areas, where keen trading competition is generally known to exist, off-rail and on-rail shippers may be located at and/or near the one point of origin and served by the one carrier and utilizing its facilities at the same station as shown in the illustration on page 6 of Exhibit No. 35.

This illustration is, for example an actual condition that exists in Arlington, Minnesota. Arlington is served by only the Minneapolis and St. Louis Railway Company. Located in the town are two carload egg shippers. One is located on a rail siding and operates buying stations in the surrounding area. This company is typical of shipper "A" in the illustration. The other shipper in Arlington is a pool car operator who consolidates into carload lots the shipments of eggs from individual producers or buyers located at and shipping from such points as Hutchinson, Plato, Gibbon, and Henderson, Minnesota, and perhaps other points in the surrounding area. These producers or buyers of eggs are typical of the "C" shippers shown in the illustration. It so happens to be a fact that both carload shippers send their respective cars of eggs to egg receivers located in New York City, N. Y.

It can be seen at a glance that the "A" shipper who loads his car of rehandled and repacked or storage-packed eggs on the private rail siding, the "B" shipper who loads his car of rehandled and repacked or storage-packed eggs on [fol. 515] the railroad team tracks, and the "C" shipper of eggs rehandled and repacked or storage-packed at other than the rail point of origin, who also has his shipments loaded in a car on the team tracks, all tender their respective cars to the railroad for transportation at the same rail point of origin. Also seen at a glance, is the fact that these cars when transported to the same destination market will receive identical transportation by the carriers over whose lines the shipments move, and the freight rates in effect and charged on each separate shipment of an equal number of cases will be identical. In addition to this, I might add that besides the commercial condition or the character

of shipment being the same, these cars may also contain identical grades of eggs packed with identical new flats and fillers in identical new wooden or fibreboard cases. In looking at this illustration there is not the slightest shadow of doubt as to when and where the carrier's responsibility begins and terminates. Its responsibility begins at the rail point of origin when the shipments are accepted for transportation according to condition and started on their journey. In the absence of an exception taken to any one shipment, the carrier's agent signs the bills of lading as received in apparent good order and the carriers have full responsibility for and sole control over such shipments until they are delivered to their respective consignees at ultimate destination.

Notwithstanding all things being equal insofar as the [fol. 516] transportation aspects are concerned, yet upon arrival at destination, should each car, as a result of carrier negligence, sustain identical loss and damage, the carriers will recognize their full liability in connection with the shipments from the "A" and/or "B" shippers shown on the illustration but, because of only the commercial and not the transportation aspects, carriers under the current regulations limit their liability to the amount of damages in excess of 5 per cent in connection with the car containing the "C" shipper's eggs, with no regard whatsoever as to where or when such damage occurred.

The record in the instant proceeding thus far shows that there is no physical difference in the commercial practice of rehandling and repacking or storage-packing eggs by shippers "A," "B," and "C." The only difference between these three classes of shippers is in their location or business address, as shown in the illustration on page 6; therefore, the traffic itself is of like kind. Also shown is the fact that the service of transportation is like and contemporaneous and that it is performed under substantially similar circumstances and conditions.

In my opinion, there appears to be no sound justification for the rail carriers to condition their terms of acceptance of any shipment of eggs or to limit their liability in connection therewith strictly upon a commercial practice which takes place beyond the lines of the railroad, because of the

fact that the rail carriers do not participate in the rate of [fol. 517] route of the movement to the rail point of origin from the original point of shipment where the "C" shippers are located.

It is clear that when the "C" shippers, in accordance with the current regulations, must describe their shipments of rehandled and repacked or storage-packed eggs on their respective bills of lading as "current receipts" or "graded" eggs, they are unduly prejudiced by being automatically barred from receiving the same measure of protection from the carriers against claim losses resulting from carrier negligence, similar to the protection the carriers accord their competitors "A" and "B" as shown in the illustration. This discrimination and undue prejudice can be avoided, I believe, if controlling weight is given to the commodity itself as it is, according to its true character of shipment, when tendered to the carriers at the point of origin where the railroad responsibility begins.

It is also very clearly shown in the illustration on page 6 that in rendering transportation service to the "A," "B," and "C" shippers of eggs the carriers perform no more nor any less service in connection with any one car of eggs as compared with any of the other cars of eggs from the same rail point of origin to the same rail destination. The freight rates and charges on an equal volume of eggs in any one car is likewise neither more nor less than the rates and charges applying on competitor's cars between the same points which, in my opinion, does not justify in any way why the "A" and "B" shippers should receive special claim [fol. 518] consideration on their shipments of eggs, which consideration is not given to the "C" shipper's shipments of eggs.

I will now direct to the attention of the Commission some statistical information pertinent to the issues involved in the instant proceeding which deals with egg transportation by railroads.

Page 7 consists of a statement showing for the Class I railroads of the United States, statistics covering the trend of shell egg traffic volume in carloads, tons, and average tons per car originated; freight revenue in dollars; average revenue per car and per ton originated for the years 1939

to 1948 inclusive, and for the first 6 months' periods of 1946 to 1949 inclusive, with percentage relationship to the year 1939 as index 100.

It will be noted in this statement and for the most part in the statements to follow that the statistics are compiled from the year 1939 down to the year or period for which the latest statistics are available and have been released to the public by either the Interstate Commerce Commission, the Association of American Railroads, and or the United States Department of Agriculture. In other words, the statements contain statistics of the prewar period, the years during World War II, and the latest information available in the postwar period.

The second column in this statement shows the number of [fol. 519] carloads of shell eggs that originated throughout the country on the Class I railroads. It will be noted how, through the years following 1939, the volume of carloads increased with the peak being reached in 1944, which represents a substantial increase of 66 per cent over 1939. It is also shown that in 1945 the carload volume began a downward trend and by 1948 the volume transported was 23 per cent less than in the prewar year of 1939, and only 47 per cent of the volume of carloads of eggs transported by rail in the peak year of 1944.

The first 6-month periods of 1946 to 1949 inclusive are more indicative of the recent trend of declining carloads which in 1947 were 27 per cent less than in 1946, and in 1948, 17 per cent less than in 1947. The declining volume of carloads in 1949 was 54 per cent less than in 1948, or 72 per cent less in volume than in the corresponding period of 1946.

In commenting on the declining trend in the volume of carload egg traffic originated on the Class I railroads, it appears to me that the downward trend is not the result of any substantial decline in egg production for the country as a whole nor is it the result of any substantial change in the regional pattern of production. The statistics which are to follow later will support these views. The declining trend, particularly since the first six months of 1946, may be the result of several factors which should receive due recognition and consideration. Foremost of these factors

[fol. 520] are the increasing freight rates and charges which began to surge upwards on July 1, 1946, and which were followed by six more increases in freight rates and charges within the periods shown in this statement on page 7.

The Ex Parte 162 increases which became effective on July 1, 1946, and January 1, 1947, are reflected in the first 6-month period of 1947. The Ex Parte 166 increases which became effective on October 13, 1947, January 5, 1948, and May 6, 1948, added to the Ex Parte 162 increases, are reflected in the first 6-month period of 1948, and the Ex Parte 168 increase, which became effective on January 11, 1949, in addition to the increases in Ex Parte 162 and 166, is reflected in the first 6-month period of 1949. Incidentally, in connection with these three general revenue cases, the rail carriers did not petition for, nor did the Commission authorize, maximum or "held-down" increases on shell egg traffic as was done on a good many other items.

The other principal factor which I believe to be responsible for the declining egg traffic by railroads is the change in the Special Regulations which became effective on July 24, 1948. The effects of the current Special Regulations and the increased rates are reflected in the last 6 months of 1948 and in the first 6 months of 1949. In other words, the total number of carloads of eggs which originated in these two semi-annual periods amounted to 15,625 carloads or [fol. 521] 64.8 per cent of the 24,123 carloads of eggs that originated in the corresponding periods of 1947 and 1948.

Column 4 is indicative of the volume of tonnage originated in the carloads shown in Column 2. The peak number of tons transported was also reached in 1944 as a result of a very heavy production of eggs in all regions throughout the country, which will be shown in detail later.

The rate of decline in the tonnage originated and transported by the Class I railroads since the peak year of 1944 is more pronounced than the decline in carloads originated during the same period. The tons originated, in Column 4, more accurately reflect the egg traffic volume transported by rail than the carloads shown in Column 2. It will be noted that in 1944 the volume of tonnage more than doubled that of 1939. It increased 138 per cent over 1939, with only a 66 per cent increase in the number of carloads. It is shown

that in 1945 the egg tonnage volume began its downward trend and by 1948 the volume transported was only 4 per cent more than that transported in 1939, but only 44 per cent of the volume transported in the peak year of 1944.

The first 6-month periods of 1946 to 1949 inclusive are more indicative of the recent trend of rapidly shrinking tonnage which in 1947 was 28 per cent less than in 1946. In 1948 the tonnage transported during the first 6 months of the year was 18 per cent less than in the same period of [fol. 522] 1947, and in 1949 the tonnage transported during the first 6-month period was 60 per cent less than during the same period in 1948. In other words, the volume of tonnage originated during the first 6 months of 1949 represents only 24 per cent of that originated in the corresponding period of 1946.

The principal factors mentioned in connection with those which I believe to be responsible for declining carloads, also apply in connection with the downward trend in egg tonnage volume. Another factor which I believe has given impetus to the diversion of egg traffic from the rails since the peak egg traffic year of 1944 was the carloading minimum restrictions brought about by O. D. T. General Order No. 18, which became effective on November 1, 1942. I will not dwell upon the effects of the heavier loadings of eggs in cars at this time, except to point out in Column 6 that for the prewar period of 1939 to 1941 inclusive the average number of tons loaded per car was in the neighborhood of 11.42 tons and in the peak years of 1944 and 1945, when the egg traffic volume in carloads and tonnage was greatest, the average loading in tons per car was at its heaviest. It was not until July 19, 1948, that the Office of Defense Transportation modified its carload minimum weight restriction on eggs by permitting the loading of shell eggs in cases four layers high instead of the five-layer load which was effective throughout the duration of the order. The modified order, however, was suspended on February 14, 1949, and since that [fol. 523] date tariff minimum weights have been effective on shell egg traffic.

As of the latest period, the first 6 months of 1949, shown in this statement under Column 6, the average loading per car has declined only 20 per cent above normal, and in

view of the continued heavy production of eggs throughout the country, it is anticipated that the average number of tons loaded per car will level off at about 10 per cent above the prewar level.

Some small shippers found the heavy loading of eggs in cars to work a hardship upon them and when the supply of trucks which were available for egg transportation became more plentiful upon the cessation of hostilities in the recent war, greater use of motor carriers for egg shipments resulted, because a lesser number of cases was required to derive the benefit of volume rates than that required to meet the heavier carload minimum weight by rail. When shipping a lesser volume of cases per shipment by truck, shippers found that their loss and damage in the lighter loads were practically nil as compared to rail loss and damage experienced in the heavier loads.

Column 8 in this statement shows the freight revenue in dollars received by the rail carriers for the transportation of egg traffic during the periods specified. It will be noted how, through the years following 1939, the freight revenue on eggs steadily increased and almost doubled, with the peak being reached in 1944, an increase of 99 per cent over 1939. The decline in revenue was almost nil in 1945 but [fol. 524] became more pronounced in 1946 after the freight rates on eggs started on their uphill climb. It appears to me that the pyramiding increases superimposed on the basic freight rates in effect on June 30, 1946, together with the egg shippers' desires to ship in lesser volume than the rail minimum weight under O. D. T. General Order 18-A, accounted for the further drop in revenue in 1947, and, accelerating these factors in 1948, was the effectiveness of the Special Regulations here under investigation.

It can be seen that the revenue for the year 1948 was 54 per cent more than for 1939 on almost the same amount of tonnage which in 1948 was transported in 23 per cent less cars than those required for egg transportation in the base year. The shrinkage in annual revenue from the peak years of 1944 to 1948 was $2,837,249, or almost 23 per cent. This falling revenue on egg traffic has not as yet hit bottom, if we are to be guided by the freight revenue the

rail carriers received for egg transportation during the first 6 months of 1949. The revenue received in this period was 56 per cent less than that received by the rail carriers on egg traffic in the corresponding period of 1946, or a shrinkage in 1949 of $3,392,751. A further comparison of the very sharp drop in revenue, which I believe was brought about by the Special Regulations effective on July 24, 1948, can be made between the first 6-month periods of 1948 and [fol. 525] 1949. The revenue decline in the first 6 months of 1949 was 54 per cent, or $3,097,306 less than in the corresponding period of 1948. On the basis of the percentage for the full year of revenue which the carriers received for egg transportation as shown in the first 6 months of 1948 (60 per cent), it is estimated that the total revenue they will receive in the full year of 1949 for egg carload traffic very likely will be less than 4 million dollars, which will be a shrinkage of approximately 8½ million dollars in annual revenue when compared with the annual revenue from egg traffic in 1944.

Columns 10 and 12 of page 7 show the average revenue per car and per ton originated. The average revenue per car and per ton is strongly influenced by the number of tons loaded per car and the average length of haul involved. The loss of the high-revenue long-haul egg traffic that originated in California, Oregon, Washington, Idaho, and Utah and was shipped to New York, Philadelphia, and Boston, in some measure is reflected in the average revenue per car and per ton for the years following 1939.

According to the U. S. Department of Agriculture arrival reports, at the three eastern markets just mentioned, the five western States accounted for approximately 1,413 cars of eggs in 1939, 1,383 cars in 1940, 769 cars in 1941, 487 cars in 1942, and a mere 72 cars of eggs in 1943. The revenue on these cars prior to April 1, 1941, averaged $667.80 each, and after that date, $611.83 each, which pro- [fol. 526] duced a total freight revenue on these shipments amounting to approximately $944,000 in 1939, $924,000 in 1940, $471,000 in 1941, $298,000 in 1942, and $44,000 in 1943.

As an outgrowth of the war the slowly increasing egg production and the recapture of some short-haul tonnage formerly lost to trucks helped in some measure in keeping

the average revenue per car and per ton from feeling too sharply the effects of the diminishing of the high revenue on West Coast egg traffic after 1940. With this understanding, it can be seen why the trend of revenue per car and per ton in 1941 and 1942 did not follow the trend of total tonnage originated and total freight revenue received by the Class I railroads during those two years. The slight increase in average revenue per car and not per ton in 1942 undoubtedly was the result of the heavier loading of cars under O. D. T. General Order No. 18 in the last two months of the year. Nineteen forty-three shows the impact of a full year of heavy loading, the overwhelming production and shipping of eggs in all regions and the beginning of the return of egg traffic, in volume, from motor carriers to the rails. Unlike the carloads, tonnage and total revenue on egg traffic which began a downward trend after 1944, the average revenue per car and per ton, respectively, have continued to surge upwards.

This statement, as a whole, amply demonstrates a com- [fol. 527] posite picture of the rail egg traffic from 1939 through and including the first 6 months of 1949. Its rise was quite rapid but its rate of decline, with the exception of revenue per ton and per carload, does not look too good for the future, notwithstanding the fact that the volume of the production of eggs has remained relatively high.

This brings us to page 8 of my Exhibit No. 35, which is a statement showing the United States total production of eggs; the volume of eggs and case equivalents sold through commercial channels (shipped by rail and other than rail) and percentage thereof originated by rail and other than rail for the period 1939 to 1949 inclusive, with the percentage relationship to the year 1939 as index 100. Wherever I use the term "sold" in this proceeding it should be borne in mind that this portion of the egg production does not include in it the number of eggs consumed on farms nor used for hatching purposes.

Column 2 in this statement shows, in millions, the total egg production in the United States and Column 4 shows the volume of the total production that moved through commercial channels and does not include the number of eggs consumed on farms or used for hatching purposes.

Column 6 shows the conversion to case equivalents of the eggs sold as shown in Column 4, by dividing Column 4 by 360, which is the number of eggs generally packed in a 30-dozen case of standard design.

[fol. 528] Column 7 shows the number of tons of shell eggs which originated on the Class I railroads of the country. These statistics were compiled from reports issued by the Bureau of Transport Economics and Statistics of the I.C.C. and cover the volume of shell eggs that moved only in carload service.

Column 9 shows the conversion into case equivalents of the railroad tons of shell eggs originated. The conversion to case equivalents was made by multiplying Column 7 by 2000 and dividing the result by 53, which is the rail billing weight for a standard 30-dozen size case of eggs.

Column 10 represents the difference or the remainder of cases after deducting from the cases shown in Column 6, the cases originated by rail listed under Column 9. In effect, the other than carload rail originations very likely include eggs that moved from the different points of production to points of consumption via the many different modes of transportation, such as less than carload rail service, Railway Express, and truck-load and less than truck-load service via private, contract and common motor carriers.

Column 12 shows the percentage that the eggs originated by rail is to the total volume sold or that moved through commercial channels.

Column 14 shows the percentage of the otl -than-rail carload movements to the total volume sold. Index columns numbered 3, 5, 8, 11, 13, and 15 are indicative of the trend of production of eggs and the movements thereof via the [fol. 529] different modes of transport and their respective relationship to the year 1939 and shows that with each passing period since 1944 the rail percentage of the volume of eggs produced and sold is rapidly shrinking.

It will be noted in Column 2 that in the year 1944 this country's egg production hit an all-time high and broke all past records. The volume of eggs moving through commercial channels likewise shattered previous records that year with the volume of rail egg traffic originated increas-

ing by 138 per cent over the egg tonnage originated in 1939, as shown under Column 8, while the remaining volume available for truck traffic advanced only 56 per cent over 1939, as shown under Column 11.

The years shown following the peak year of 1944 indicate that there has been a slight leveling off of production; yet it remains relatively high as compared with the prewar period.

A comparison of the egg traffic volume trends since 1939 by the different modes of transportation, as shown under Columns 13 and 15, will indicate that the rails were unable to hold this traffic after reaching the peak years of 1944 and 1945. The motor carriers undoubtedly, after losing some of this traffic in those years, as an outgrowth of the war, regained a considerable portion of this traffic by reason of diversion from the railroads and not because of any great over-all increase in egg production.

The prospects for a continued high level of egg produc- [fol. 530] tion are indeed promising for the remainder of 1949 and for the first half of 1950. The Bureau of Agricultural Economics of the U. S. Department of Agriculture estimates total production of eggs in 1949 to be 55,600 million, as shown under Column 2, and it also reports that through the first half of 1950, eggs will be more plentiful than in 1949.

On the basis of the Department's preliminary estimate of total egg production for 1949, I have projected an estimate for the remainder of the 1949 statistics shown on this page. The manner in which these estimated figures were developed is fully explained in the lower portion of the page.

Our purpose in directing this particular information to the attention of the Commission is to indicate to the Commission the potential level of egg tonnage that will be available for all modes of transportation and the tonnage that most likely may be affected by any future order or orders of the Commission in the instant proceeding.

The attention of the Commission is now directed to page 9 of Exhibit No. 35, which is a statement showing regions of egg production throughout the United States and the volume sold from each region for the period 1939 to 1949

inclusive, with percentage relationship to the year 1939 as index 100.

It will be noted that eggs are produced in substantial quantities in every region of the country with the greatest volume sold from the West North Central region. This region, incidentally, as it will be shown later, ships its eggs [fol. 531] to practically every principal destination market in the country and in so doing contributes substantially to the total egg tonnage transported by all railroads. It will also be noted that this region's relative increase in production since 1939 exceeded all other regions.

This statement indicates the rapid rate of increased production in every region from 1939 to the peak year of 1944 and that, after the slight leveling off of production in most regions, the North Atlantic region exceeded in 1947 and 1948 the prior peak reached in 1944. The 1949 figure is, however, an estimate as well as are all the other 1949 figures which were based on each region's percentage of its respective volume in 1948 to the total U. S. volume sold. I believe that this statement also shows the availability of eggs for transportation in every region in the country.

Page 10 of Exhibit No. 35 is a statement showing volume of eggs sold through commercial channels from State's representative of each region for the years 1939 to 1948 inclusive, with the percentage relationship of each year to 1939 as index 100. Also shown is the percentage relationship of each State's production sold to the United States total production sold.

It is interesting to note in this particular statement that for some of the representative States the production peaks did not necessarily follow the national pattern nor the regional pattern of the production trend and reached their [fol. 532] particular peak production year in 1948. These particular States are Pennsylvania, Indiana, and California, all shipping substantially by motor carrier now but which formerly shipped eggs in substantial volume by rail.

The lower portion of the statement shows, percentage-wise, the relative importance of the representative states to the United States total in production sold.

For a more descriptive showing of the importance of all other states, I should like to direct the attention of the

Commission to page 11 of Exhibit No. 35, which shows statistics of egg production sold for individual states covering representative years of 1939, 1944, 1947, and 1948, also the relative importance of each state's production to total United States production.

This statement, I believe definitely establishes that eggs are produced in every state and whether in large or small volume indicates the existence of a nation-wide competitive situation between producers. By reason of the nation-wide application of the Classification's Special Regulations on eggs here under investigation, all producers in every state shipping their eggs in interstate commerce are subjected to compliance therewith. In shipping eggs by rail to a common destination market it is imperative that uniformity in rail transportation rules, regulations and conditions apply to all alike so as to avoid giving some producers a [fol. 533] competitive advantage or cause other producers to suffer a competitive disadvantage.

In order to show the relative importance of the volume of eggs transported by rail to the total volume of eggs produced in each state, the Commission's attention is now directed to page 12 of Exhibit No. 35. Page 12 is a statement showing by individual states a comparison of the volume, in tons, of shell eggs sold through commercial channels with the volume of tons of shell eggs originated in carload shipments by Class I railroads and the percentage each State's rail tonnage is of the total production sold for the years 1944 to 1948 inclusive. This statement is self-explanatory in showing the existence of competition between producers of eggs in all states and that practically all states are shipping some proportion of their production of eggs by rail. In 1945 and in each passing year most states sharply curtailed rail shipments and still other states, particularly those producing eggs in small volume, are now shipping none at all by rail.

It is my opinion that as long as the Special Regulations are applicable on shell egg shipments and as long as the present high level of rates are assessed against egg shipments subjected to compliance with the Special Regulations, future increases in the percentage of the rail volume

of movements to the total volume of eggs moving through commercial channels are doubtful.

[fol. 534] Because of the keen competition existing between egg producers in all states, especially at common destination markets, the producers and shippers of eggs must find ways and means of meeting their competition by shipping at the lowest and most reasonable cost and under the most reasonable terms and conditions. I believe this competition situation between producers is more amply demonstrated in a review of pages 13 to 17 inclusive of Exhibit No. 35.

Pages 13 to 17 inclusive consist of a statement showing the individual states of origin and the total number of cases of shell eggs received from these states by rail and by truck at 11 principal markets in the United States for the representative years of 1939, 1944, 1947, and 1948. Also shown is the percentage each state's shipments are to the total receipts at the destination markets, the number of markets reporting receipts from the originating states, and a summary of the number of states shipping eggs to the destination markets.

The receipts, in cases of eggs, shown in this statement were compiled by Production and Marketing Administration's Market News Division field offices from current information supplied voluntarily by railroads (rail receipts) and dealer-distributors (truck receipts).

It will be noted at a glance the highly competitive situation that exists, on the one hand, between egg producers or shippers in the various states of origin in the marketing of their shipments of eggs and, on the other hand, the [fol. 535] existence of a highly competitive situation that exists between receivers at the different destination markets in obtaining shipments of eggs from the different producing states. For example, the attention of the Commission is directed to the origin state of Illinois, shown near the bottom of page 13; the States of Iowa, Kansas, Minnesota, and Missouri, on page 14; Nebraska and North Dakota on page 15; South Dakota and Wisconsin on page 16; and it will be noted that the shippers of eggs in these States have shipped their eggs in the past or are still shipping their eggs to every destination market where

origins of receipts of dairy products are reported by the Market News Division field offices. It will be also noted how the volume of receipts fluctuates in the different representative years and, where a decline in receipts is noted in any one year at any one destination market from any one state of origin, an almost corresponding increase in volume of receipts will be shown at any one or more of the destination markets from that particular state of origin.

Column 25 indicates the total number of destination markets reporting receipts from the individual states of origin and page 17 contains a summary of the total number of states shipping eggs to any one of the reporting destination markets.

Commercial conditions and practices incident to the efficient and orderly marketing of eggs through all channels of distribution for many years have evolved around uniform competitive conditions in connection with practically [fol. 536] all movements of eggs from producer to consumer. The peculiarity of the commodity itself and the condition or terms under which it is bought and sold seems to warrant uniform rules, regulations, and carrier practices to avoid any disruption in the efficiency and orderliness in which eggs have been and are marketed. The buying and selling of shell eggs is done on the basis of a price in pre-dozen units, which is dependent upon the quality and size of the shell eggs at the time the transaction takes place at either origin or destination.

There are various grade quality and sizes of all eggs produced and shipped into the different markets from all producing sections of the country, in volumes which seem to be conditioned upon the different seasons of the year and also conditioned upon the demands at any one or all markets for the different grades by quality and sizes. The supply and demand for the various quality and sizes of eggs at the destination markets are largely responsible for the fluctuating prices paid per dozen for the eggs. Prices offered at some markets differ from those offered at other markets at identical times for identical quality and sizes and the difference in prices may range from ⅛ cent per dozen eggs and up.

It seems to be one of the requisites for efficient, orderly,

and economical purchasing of eggs, that each prospective buyer or consignee, have full knowledge of the exact transportation charges and conditions involved in the receipt of [fol. 537] the eggs from any point of origin before he can offer a producer or shipper a stipulated price per dozen for his eggs.

A tolerance rule applicable on a damaged shipment of eggs at any one market would have to be dealt with by buyer and seller and an uncertainty would be created in arriving at an offering and acceptance price which would have considered therein some amount of money for the absorption of damage losses that may result during transportation.

Damage upon arrival of a car of eggs is hardly ever uniform and a tolerance rule in connection with claims therefor could only lead to confusion and grief for the shipper or receiver because any set margin allowed for profit in the transaction could easily be wiped out by the absorption of damage losses in the shipment being greater than anticipated.

Eggs arriving by rail at the different competitive destination markets should therefore be subjected to uniform transportation rules and conditions, particularly in connection with claim settlements on shipments sustaining damage enroute so as to avoid giving some markets a competitive advantage or cause other markets to suffer a competitive disadvantage.

Besides the competitive condition that exists between egg shippers and receivers, as shown in this statement, it is believed that the Commission should be cognizant of the competitive condition that exists in shell egg traffic between the different modes of transportation, and in this regard [fol. 538] the Commission's attention is directed to pages 18 and 19 of Exhibit No. 35.

Pages 18 and 19 consist of a statement showing a summary of shell egg receipts in cases for the periods indicated, at 11 principal markets via rail and truck, also the percentage relationship each mode of transportation is to the total receipts at each market, and the percentage relationship the annual total receipts are to the year 1939 as index 100. More specifically, page 18 shows the complete

annual summaries of receipts of cases of shell eggs by rail and by truck, respectively, at four principal markets, namely, New York, Chicago, Philadelphia, and Boston, for the years 1939 to and including 1948, also a summary of the total receipts at the four markets.

Page 19 in part shows for San Francisco, Los Angeles, and Baltimore, total receipts of shell eggs in cases from 1939 to 1948 inclusive, and in part shows the volume of the total received by each mode of transport. Segregation of the total receipts between rail and truck were made by the field offices of Production and Marketing Administration's Market News Division at these destination markets, beginning with the years so indicated in the statement. Market News Division's field offices were opened at Atlanta, Cincinnati, Detroit, and New Orleans, in the latter part of 1946 and began reporting on the receipts of dairy and poultry products effective January 1, 1947, which accounts for reports covering receipts at these markets only in [fol. 539] 1947 and 1948.

Before reviewing these statements I want to reiterate that the receipts reported were compiled from current information supplied voluntarily by the railroads for rail receipts and the best that could be acquired from dealer-distributors for truck receipts. The rail receipts include cases of shell eggs arriving in Railway Express, less-than-carload and carload shipments. It is also reported by the field offices of Market News Division that the truck receipts shown in their reports do not include all truck arrivals as it is impossible to obtain reports from all receivers in their respective cities.

On page 18 it will be noted at all four markets that the percentage of receipts of cases of shell eggs by rail as compared with the percentage of receipts by truck declined considerably in 1948 as compared with 1939, while the total receipts increased individually and collectively at the four markets and, on the other hand, the volume of cases of shell eggs arriving by truck at some of these markets almost doubled. Percentagewise, for all four markets, the rail receipts in 1948 were 72 per cent of the rail volume in 1939, a decline of 28 per cent and the truck arrivals reported increased 43 per cent in 1948 over the truck volume reported

in 1939, with only a 7-per cent increase in the total receipts of shell eggs in cases at all four markets. It is also interesting to note in this statement that the peak volume of egg receipts by rail at some of these markets was reached one [fol. 540] and two years after the reported peak volume of total egg traffic transported on all the Class I railroads was reached in 1944, as shown in the statement on page 7 of this exhibit.

Pages 18 and 19 definitely show that the motor carriers are making great inroads into the egg tonnage volume formerly transported by rail and the trend of diversion of egg traffic may be further stimulated if the Commission does not find the current Special Regulations, as we allege, unreasonable.

The current Special Regulations here under investigation have given impetus to the diversion of rail egg traffic to the motor carriers and the effects thereof for the time they have been in existence are more amply demonstrated in pages 20 to 23 of Exhibit No. 35.

Pages 20 to 23 consist of a statement showing for corresponding periods in 1947, 1948, and 1949 the effects of the Special Regulations by a comparison of receipts of shell eggs, in cases, arriving by rail and by truck at 11 principal destination markets, the percentage variation in volume by each mode of transport during each period, and the percentage relationship of volume in each period to the corresponding periods in 1947.

This particular statement should receive very careful consideration and is worthy of being reviewed line by line for an appreciation of the impact that the current Special Regulations have had on shell egg traffic ordinarily received at the different destination markets by railroad. In [fol. 541] order to conserve time, I will not discuss every pertinent detail in this statement but would like to direct the attention of the Commission to lines 15 to 22 inclusive on page 23, which are a summary of the total receipts at all 11 markets. Some of the figures are almost unbelievable because it just does not seem possible that the railroads could lose so much tonnage in so short a period of time. Strange as it may seem, these figures must be true because the percentagewise decline of 67 percent in the January

to July period of 1949 compared with the same period in 1947 corresponds with the 67 per cent decline in rail tons originated for the first 6 months of 1949 as compared with the rail tons originated in 1947 as shown in Column 4 of page 7 of this exhibit.

My reason for using January to July 1947 as my base period in this statement was to bring out the fact that the rail carriers were gradually losing the egg traffic before the current regulations became effective. This will be noted on lines 15 and 16 under Column 4, which show that the percentage of total receipts by rail was 49 per cent for the 1947 January to July period and 41 per cent for the corresponding period in 1948.

After becoming effective in the last week in July, 1948, the Special Regulations could not have had too great an effect upon the July receipts in that year but the January to July period in 1949, showing the rail percentage as only [fol. 542] 20 per cent of the total volume of receipts at the 11 markets very definitely indicates that the Special Regulations are, as we allege, unreasonable and have forced the traffic off the rails.

The figures shown on line 22 are estimated on the basis of the percentage rate of decline in total receipts and truck volume in January to July 1949 under the corresponding period in 1948 and were projected for the full year of 1949. I am inclined to believe that when the final figures are completed for 1949 the actual percentage of all cases of eggs arriving at these 11 markets by rail will be less than the 16 per cent shown on line 22 of Column 4.

Pages 13 through 17 inclusive of Exhibit No. 35 were designed to primarily show the existence of competitive conditions, on the one hand, between egg producers located in all states and competitive conditions that exist, on the other hand, between receivers at the different destination markets.

Pages 18 and 19 of Exhibit No. 35 show in some measure the competitive condition that exists between the different modes of transport.

Pages 20 through 23 were designed to show the diminishing, and perhaps vanishing, volume of rail egg traffic because of the effectiveness of the Special Regulations; but

for a more descriptive illustration of the extent to which the competition between carriers has advanced, the Commission's attention is directed to pages 24 to 27 of Exhibit No. 35.

[fol. 543] These pages consist of a statement showing a summary of shell egg receipts, in cases, arriving from all States by rail and truck, respectively, at New York City, N. Y., for the representative city from each state of origin and the mileage therefrom to New York City and the resulting average haul per case of eggs via rail and truck on the basis of rail miles, and the relationship of the average haul to the year 1939 as index 100.

Column 1 shows the state of origin, together with a representative city. This representative city, or as hereinafter referred to as the base city, for the state, does not necessarily mean that all eggs originate at that point. It is impossible to compile the exact points of origin within any state because no such point-to-point records are available at the sources releasing the statistics. The only information compiled at the terminal markets at destination is the state of origin from which eggs are shipped. The selection of a base city was made with some measure of care inasmuch as it represents the entire state. The sources from which we took the base city miles contained mileages in some instances from several points and the base city was selected because its mileage to the destination shown was the closest to the average for all the points shown in that state to the destination market. Other base cities were selected because of our knowledge that fairly reasonable volumes of eggs [fol. 544] originated at those cities.

The use of the mileages shown under the base cities in Column 1 for the truck mileages was only done as a matter adhering to the formula designed to determine the extent to which the rails and trucks were either transporting more or less tonnage for longer or shorter distances. The formula designed was to take the number of cases of eggs arriving at the destination market by rail and/or truck, as shown under Columns 3 and 5, and multiply the volume by the base city miles shown under Column 1, which produced what is shown as the rail "case" miles and the truck "case" miles under Columns 9 and 10, respectively.

Page 27 will show the weighted average length of haul per case by each mode of transport, which average was arrived at by use of the aforementioned formula after dividing the total number of "case" miles by the total number of cases reported arriving by each mode of transport. The use of a base city and the mileage therefrom to the destination market can only be considered as reasonably representative rather than exact, but the relative changes in the length of haul compared with 1939, as shown in the index figures on the last 4 lines of Columns 3 and 5 of this page, strongly indicate with some exactness the percentage-wise measure of changes in the length of haul by each mode of transport.

In stating that the mileage can only be considered as [fol. 545] reasonably representative, it may be well to compare the average miles shown under Columns 3 and 5 in the next to the last group of figures on page 27, with the average short-line hauls per ton and per car on carloads of eggs contained in Table 14 of page 15 in the "Carload Waybill Analyses, 1947" which recorded "Terminations in 1947", computed from "Audited Waybills representing One Per cent of Carload Traffic Terminated by Class I Railways during 1947" released by the Bureau of Transport Economics and Statistics of the Interstate Commerce Commission in Statement No. 496.

These data show in connection with U. S. to U. S. territorial movements an average short line haul per ton and per car, 1057 miles, and in connection with the U. S. to Official territorial movement average short line hauls per ton and per car, 1080 and 1079 miles, respectively. These figures reasonably bear out the resulting average length of haul per case shown as 1,072 miles to New York City from all States of origin also for the year 1947, on page 27 of Exhibit No. 35.

In the "Carload Waybill Analysis, 1948" showing the terminations in 1948, issued by the Commission's Bureau of Transport Economics and Statistics (Statement No. 4929) it was reported that from audited waybills representing one per cent of carload traffic terminated by Class I railways, the average short-line haul per car of eggs was 1,072 miles.

It seems that most States producing the largest volume [fol. 546] of eggs in the different regions of the country are the ones largely responsible for the diversion of the egg traffic to the motor carriers. This will be borne out by a review of the traffic reported arriving at New York City by truck from the States of Illinois, Indiana, and Iowa, shown on page 24, Minnesota on page 25, and Ohio and Pennsylvania on page 26. These States show a considerable increase in egg traffic volume by motor carrier and form a wide path from the areas of production to New York City which indicates that since the prewar and war periods more trucks are hauling larger volumes of eggs than heretofore directly through this path, and we may yet see this path extended to States further west thereof in the years to follow.

Another illustration of the changes in volume and length of haul is shown on pages 28 through 31 of Exhibit No. 35, which consists of a statement showing the identical information in connection with the egg traffic arriving respectively by rail and by truck at Chicago, Illinois, during the same periods as shown for New City on the previous pages. These illustrations, it is believed, give us a fairly reasonable picture of the national pattern of distribution of egg traffic because they comprise movements of the traffic from the States producing the largest volume of eggs to what may be called a "long haul" and a "short haul" market, which markets are the two most important ones in the country for the receipt of eggs. The base cities, [fol. 547] mileages, and "case" miles, shown on pages 28 through 31, covering the Chicago market were selected and compiled in the same manner as those expressed in connection with pages 24 through 27 dealing with the New York City market.

It will be noted on page 30 that approximately 1,600,000 more cases of eggs arrived at Chicago in 1948 than in 1947 by both modes of transport. Of the increased volume the motor carriers transported the major portion consisting of approximately 1,000,000 cases and the rail portion consisted of approximataely 600,000 cases. It will be noted that the weighted average length of haul by rail increased from 329 miles per case in 1947 to 366 miles per case in 1948.

The truck weighted average length of haul declined 5 miles in 1948 as compared with 1947, which undoubtedly was the result of an overwhelming increase in the volume of eggs arriving by truck from the State of Wisconsin, as shown on page 30, and other nearby States. If we go back a moment to lines 9 and 10 of page 20 of this exhibit we will note that there are some changes due in the aforementioned figures when the total 1949 arrivals of receipts of shell eggs in cases are reported at Chicago.

The reasonableness of the rail-weighted average length of haul from all States to Chicago is also borne out by Statement No. 496 released by the Bureau of Transport Economics and Statistics, if Chicago is considered as comparable to the eastern terminus of Western Truck Line Territory. Table 14 on page 15 of Statement No. 496 shows [fol. 548] the average short-line haul per ton and per car, in connection with the territorial movements from U. S. to Western Trunk Line or from Western Trunk Line to Western Trunk Line to be 333 and 330 miles, respectively. These waybill study mileages of "Terminations in 1947" compare favorably with the 329 miles representing the weighted average length of haul by rail from all States to Chicago, shown on page 31 of this statement, for the year 1947.

The "Carload Waybill Analyses, 1948" do not show the average length of haul for territorial movements; therefore, we were unable to make a comparative check on the 1948 average length of haul by rail, as shown on page 31.

Page 32 of Exhibit No. 35 is a statement showing collectively, the summary of shell egg receipts in cases, arriving at New York City, N. Y., and Chicago, Illinois, by rail and by truck, respectively, for the representative years of 1939, 1944, 1947, and 1948; the percentage that the volume of receipts by each mode of transport is to the total receipts at both destination markets individually and collectively; the total "case" miles by rail and by truck; the weighted average length of haul per case; and the relationship of each to the prewar year of 1939 as index 100.

These statements, I believe, amply demonstrate the keenness of the competition that exists between the railroads and the motor carriers for the Nation's egg traffic.

Page 32, in particular, shows a phenomenal rise in the vol-
[fol. 549] ume of eggs transported by motor carriers to the different destination markets during the postwar period. Also indicated in this statement is the fact that if the experience at the New York City and Chicago markets is considered as a criterion for the national pattern of egg traffic distribution, it is then shown that since the war period the motor carriers are transporting eggs in larger volume for longer distances from origin points to destination markets and that the rail egg traffic overage haul is increasing because of what appears to be a greater loss of short-haul traffic.

This testimony up to now has dealt largely with the production and distribution of eggs on a Nation-wide scale, with emphasis placed on the existence of competitive conditions incident thereto. Emphasis was also placed on certain principal destination markets and the manner in which eggs arrive at those markets. The time now seems propitious to direct to the attention of the Commission the transportation rates and charges applicable on carload shipments of shell eggs moving, in part, in the pattern of movements previously demonstrated. Because it has been shown in the statement on pages 13 to 17 inclusive of this exhibit that eggs are shipped and have been shipped to the New York market from more than three-fourths of all the States in the United States, it is believed that a fairly representative showing in relation to the rates and charges
[fol. 550] on shipments of shell eggs will be found on page 33 of this exhibit.

Page 33 of Exhibit No. 35 contains a statement showing from representative points of origin to New York City, N. Y., freight rates and carload charges applicable on shell eggs, in cases, since June 30, 1946, the effects thereof in increased charges under Ex Parte 162, 166, and 168, and the percentage relationship to the June 30, 1946, rates and charges as index 100. Also shown in the amount of dollar increase in revenue per carload resulting from each increased freight rate.

Line 1 shows the published rates per 100 pounds applicable on carload shipments of shell eggs that were in effect on June 30, 1946, and for some time prior thereto. The

rates shown on lines 2 and 3 are the line 1 rates including the authorized interim and final increases, respectively, accorded the railroads by the Commission in Ex Parte 162. The rates and charges on shipments of shell eggs were increased in Ex Parte 162 by a total of 20 per cent when the basic rates were published as commodity rates, and 20 per cent, 22½ per cent, and 25 per cent, respectively, when published as class or exception ratings, depending upon the territorial movement of the shipments.

Lines 4, 5, and 6 show the effective dates and resultant interim and final increases in freight rates under Ex Parte 166. The total increases in rates and charges accorded to the railroads by the Commission in Ex Parte 166 super-
[fol. 551] imposed on the prior effective rates and charges on shipments of shell eggs an additional increase of 25 per cent and 30 per cent, respectively, depending upon the territorial movement of the shipments.

Line 7 shows the further advance in freight rates accorded the railroads by the Commission in the interim decision of ex parte 168, effective January 11, 1949, which also superimposed on the previously increased rates and charges an additional 4-per cent, 5-per cent, and 6-per cent increase, also depending upon the territorial movements of the shipments.

Line 8 shows the rates including the final Ex Parte 168 increase which brought the total increases in this proceeding up to 8, 9, and 10 per cent, also depending upon the territorial movements of the shipments. The line 8 freight rates are currently applicable on carload shipments of shell eggs moving from the selected representative points of origin to New York City, and show that since June 30, 1946, the respective rates have been subjected to a total increase ranging from 64 to 79 per cent on these specific movements.

Lines 9 to 16 inclusive show the conversion of the freight rates shown on lines 1 to 8, respectively, into freight charges per carload of 480 cases of shell eggs billed at the current shipping weight of 53 pounds per case, as authorized in the Consolidated Freight Classification No. 18. My reason for selecting 480-case shipments at a carload weight of 25,440 pounds is to direct to the attention of the Com-
[fol. 552] mission the carload charges on egg shipments

which more nearly reflect the actual loading of cases of eggs presently shipped and which loading will probably prevail in the immediate future.

The rates and charges shown in this statement do not have included therein any charges for refrigeration and or heater service, which charges when applicable for the service performed are in addition to those shown herein. Neither do these rates and charges have included therein the Federal transportation tax.

It must be borne in mind, however, than in 1946, 1947, 1948 and during the first 6 months of 1949, the average loading of all cars of eggs in the United States was much heavier than the carload weight shown in this statement and which very likely resulted in freight charges and increased revenue per car being more than is shown here.

The percentagewise increases in freight charges per car since June 30, 1946, correspond with those shown in connection with the freight rates. But to fully appreciate how much in dollars and cents the successive increases cost each producer and shipper of a carload of eggs for transportation of like volumes over a short period of time, it is suggested that all the odd numbered columns from line 9 to 21 inclusive in this statement be very carefully studied. It will be noted that the increased charges paid by the shippers and collected by the railroads, over June 30, 1946, [fol. 553] represent a very substantial amount of money, ranging from $160.27 to $390.25 per car for the movements shown. In view of these facts, it is my opinion, that when compared with prior years, the railroads are being more than amply compensated for such movements despite their higher operating expenses which include, in some measure, the loss and damage claim payments on shell eggs.

Because of what appeared to be abnormal and excessive loss and damage claims on carload shipments of eggs the rail carriers believed that they could correct this situation by adopting, publishing, and making effective the Special Regulations here under investigation. These Special Regulations limit the carriers' liability to damages in excess of 5 per cent in connection with certain shipments of eggs shipped under certain circumstances and conditions. This

limitation of liability or what may be referred to as the tolerance rule, in my opinion, can only eliminate the loss and damage claim payments but not the cause of loss and damage itself. A high degree of care is requisite in the handling of eggs, and freight rates accordingly are made in contemplation of the fragility of the commodity and the hazards assumed by the carriers.

Due to their inherent fragility, there is a certain hazard in the transportation of eggs that the carriers must assume and, since a rule or regulation adopted by the carriers cannot make an egg shell any stronger, I believe that the [fol. 554] carriers must resort to physical means of correcting the abnormal and excessive loss and damage situation by improving their present method of handling—not only eggs —but all other freight.

Eggs are but one single commodity among many thousands shipped by railroad throughout this country. They consist of an infinitesimal part of one per cent of the total volume of carloads and tons of freight transported annually by the Class I railways in the United States. Therefore, in accordance with the facts that are to follow, I firmly believe that if the rail carriers exercised more diligence and care in the handling of all other freight, such a practice would have a tendency to almost completely eliminate the loss and damage sustained to the insignificant volume of carloads and tons of eggs with the ultimate result that very few loss and damage claims need be filed against the carrier. In touching upon this point, the Commission's attention is now directed to page 34 of Exhibit No. 35, which is a statement showing the percentage and ratio relationship of the grand total carload traffic originated to the total carload egg traffic originated, for the period 1939 to 1948 inclusive. Relationship is also shown for the first 6 months of 1946, 1947, 1948, and 1949.

The carloads, tons handled, and tons loaded per car for the grand total of carload traffic originated, are shown under Columns 2, 3, and 4, respectively. The total shell egg traffic originated is shown by carloads, tons, and tons loaded per car, under Columns 5, 6, and 7, respectively. [fol. 555] The shell egg traffic percentage of total traffic for carloads and tons is shown under Columns 8 and 9.

The ratio of total traffic to egg traffic in carloads and tons is shown under Columns 10 and 11. During the year of 1944 when the egg traffic volume by railroad was at its peak, the ratio of all traffic to egg traffic was 797 cars to one and 1,954 tons to one. Because of the declining volume of egg traffic, it will be noted that in 1948 the ratio of all traffic to egg traffic advanced to 1,671 cars to one, and 4,527 tons to one, and during the first 6 months of 1949 the ratio advanced still further, showing that for every carload of eggs the rail carriers originated 2,609 cars of all freight. The tonnage ratio likewise increased to 7,838 tons of all freight to one ton of eggs.

In view of these facts, it is understandable that against such overwhelming odds, the carloads and tons of fragile eggs are bound to sustain loss and damages in a greater degree than most other freight, because it appears to me that eggs are handled no differently than all other freight transported by rail. In support of this conclusion, the Commission's attention is now directed to page 35 of Exhibit No. 35, which contains a statement showing freight loss and damage claim payments by Class I railways on all freight traffic (carload and less-than-carload) and shell egg traffic (carload and less-than-carload) for the years 1939 to 1948 inclusive, with percentage relationship to the year [fol. 556] 1939 as index 100; also percentage of egg traffic claim payments to claim payments on all freight traffic.

It will be noted under Column 2, that the annual claim payments on all traffic in 1939 steadily increased many times over, from $18,885,330 to $135,390,664 in 1948. Percentagewise these annual claim payments increased 617 per cent in 1948 over 1939. The shell egg traffic claim payments shown under Column 4, in 1939 amounted to $144,741. Unlike the trend of claim payments on all traffic, the claims on shell eggs in 1941 declined to $119,077, or 82 per cent of the amount paid on 1939. The egg claim payments began their upward trend in 1942 and reached a peak of $2,338,462 in 1947, representing a percentage increase of 1516 per cent over 1939. In 1948 it is shown that egg claims began a downward trend, dropping to $2,016,463, or 1293 per cent over 1939. In view of the declining volume of shipments since 1944, it appears that the rail carriers are beginning

to clean up their backlog of loss and damage claims and it is anticipated that an all-time low in egg claims and payments thereof will be reached within the next year or two.

It will be noted under Column 6 that the percentage of egg claim payments to the total claim payments on all traffic is relatively small and, as previously stated, if the carriers correct their handling of all freight, the percentage that egg claims may be to the total claims will undoubtedly be lost in decimals.

[fol. 557] At this point it may be well to direct to the attention of the Commission some information related to the carriers' backlog of claims. From this information the Commission may determine that there is some measure of distortion in connection with the averages of amounts of certain claims paid when apportioned against the traffic volume originated during the year in which claims are paid, instead of the claim payments by carriers being allocated to the years in which the tonnage actually originated.

Page 36 of Exhibit No. 35 contains a statement showing the summary of reports of Freight Claim Office Performance for the years 1939 to 1948 inclusive. This statement contains information as to number of new claims received from claimants, number paid, declined and withdrawn, and periods of adjustment, as well as amount in suspense account, as reported by carriers each month on Standard Form No. FCD-1. The information herein was compiled from the statistics on file in the library of the Association of American Railroads.

Column 3 shows the number of claims received from claimants, which increased steadily from 2,278,973 in 1939 to $5,872,542 in 1947, and then dropped to 4,890,601 in 1948.

Column 5 shows the total number of claims which include besides the claims filed in Column 3, the number of claims unsettled at the close of the previous year, shown in Column 2 and also the number of claims reopened, as shown in Column 4.

[fol. 558] Column 8 shows the total number of claims disposed of each year, which includes the number of claims paid, declined or withdrawn, as shown in columns 6 and 7, respectively. Column 9 shows the number of claims unsettled at the close of each year and it will be noted that from

the year 1939 the annual backlog of claims increased in volumn from 172,049 to 727,025 unsettled at the close of 1947. It can also be noted that a substantial reduction was made in the number of claims unsettled at the close of 1948, which no doubt is the reason the total claim payments made by the carriers did not decline in 1948, as compared with 1947, to correspond with the over-all decline in traffic volume, as shown on page 34, and notwithstanding the fact that the number of new claims filed in 1948 were almost one million less than the number of new claims filed in 1947.

Column 10 shows the ratio of claims disposed of to claims received, and claims reopened.

Column 11 shows the decrease or increase in the number of claims unsettled at the close of the year, as compared with the previous year.

Columns 12, 13, and 14 show the number of claims paid, declined or withdrawn within 30 days, between 30 and 90 days, and after 90 days, respectively. The total disposals shown in Column 15 do not include claims disposed of by several carriers which did not report the period in which [fol. 559] the claims were adjusted.

The amount of dollars in suspense, shown in Column 16, is, I understand, representative of the valuation of the unsettled claim and it can be seen that in 1947 the amount of dollars in suspense increased 1340 per cent over 1939 or from $1,789,565 in 1939 to $25,765,723 in 1947. By reason of the $22,849,293 in suspense for the year 1948, I believe that in 1949 there will be no appreciable decline in total loss and damage claim payments, as compared with tonnage volume transported also in 1949.

Page 37 is a statement showing the total amount of dollars in claim payments by the Class I railroads on all traffic, the number of claims paid, and the average amount of dollars of each claim paid for the years 1939 to 1948, inclusive, with the percentage relationship to the year 1939 as index 100.

The total amount of claims paid, as shown under Column 2, divided by Column 4, the total number of claims paid, produces the average amount of dollars paid per claim shown under Column 6. It will be noted that the average

claim paid in 1939 amounted to $8.86 and advanced 219 per cent in 1948 over 1939 to $28.28. In reviewing these amounts it must be borne in mind that they represent the average of all claims on both less-than-carload and carload shipments and, as will be shown later, bear a definite trend relationship to the average valuation of unsettled claims at the close of each year. Page 38 is a statement show-
[fol. 560] ing the grand total of carload and less-than-carload revenue freight originated in tons, the number of claims paid and the number of claims paid per 1,000 tons of revenue freight originated for the years 1939 to 1948 inclusive, using 1939 as 100.

Column 2 shows the grand total of revenue freight originated.

Column 4 show the number of claims paid, and Column 6 shows the number of claims paid per thousand tons originated. By studying the index columns 3 and 7 for the periods shown, it will be noted that there is no definite reasonable relationship between the number of claims actually paid and the number of tons originated which bears out the fact that when claim payments are allocated to tonnage originating in the year in which claims are actually paid, they do not necessarily indicate the rail loss and damage conditions prevailing in that particular year.

Page 39 is a statement showing the number of claims unsettled at the close of the year; the amount in suspense, in dollars, and the average valuation per claim unsettled at the close of each year for the years 1939 to 1948 inclusive, with percentage relationship to the year 1939 as index 100.

By comparing the average valuation per claim unsettled at the close of each year shown in Column 6 of this page, with the average amount paid per claim, shown in Column 6 on page 37 of this exhibit, it will be noted that there is a reasonable relationship between them and that this relation-
[fol. 561] ship is found in the annual average valuation of each unsettled claim on page 39, and the average amounts of claims paid in the subsequent year, on page 37. I firmly believe, therefore, that because of the close relationship between these two columns of figures that when the final amount of loss and damage claim payments are compiled for 1949 they will show the average amount paid per claim in

1949 to be higher than the $28.28 shown for 1948. I do not believe, however, that loss and damage claims on shell eggs will follow that trend, because it now appears that the trend of loss and damage claim payments on eggs is downward. In support of this belief the attention of the Commission is now directed to the following statements:

Page 40 is a statement showing freight loss and damage claim payments by Class I railways on all less-than-carload freight traffic and less-than-carload shell egg traffic for the years 1939 to 1948 inclusive, with percentage relationship to the year 1939 as index 100. Also shown is the percentage that less-than-carload egg traffic claim payments are to claim payments of all less-than-carload freight traffic.

In reviewing these figures, it must be borne in mind that in connection with less-than-carload freight traffic the carriers pick it up at the shipper's place of business or accept these shipments at the origin rail terminal. The carriers, therefore, immediately become cognizant of the condition, nature, class, kind, or perishability of the freight accepted and also of the type of service and care that must be given [fol. 562] while in transit. Full control over these shipments is exercised by the carriers, because shippers do not participate in the stowing and loading of such freight. Consequently, the manner in which it is delivered at the consignee's place of business or to the consignee at the destination rail terminal, is solely dependent upon carrier's handling enroute.

Less-than-carload freight traffic represents approximately less than 1½ per cent of the total tonnage transported by the Class I rail carriers and the claim payments on less-than-carload traffic represent an average of 29.47 per cent of the carriers' total loss and damage claim payments from 1939 to 1948 inclusive.

Because of the fact that the carriers do not report to the Commission the volume of less-than-carload shell egg traffic transported, it is difficult to determine whether there is any relationship between less-than-carload egg claim payments for the tonnage transported and the loss and damage claim payments on all freight traffic. However, it will be noted under Column 6 on page 40 that the less-than-carload

egg claim payments represent an insignificant percentage of the total loss and damage claims on all freight traffic.

Page 41 is a statement showing freight loss and damage claim payments by Class I railways on all carload freight traffic and carload shell egg traffic for the years 1939 to [fol. 563] 1948, inclusive, with percentage relationship to the year 1939 as index 100, also the percentage that carload egg traffic claim payments are of claim payments of all carload freight traffic.

The annual claim payments, in dollars, on all carload traffic are shown under Column 2. Column 4 shows the annual claim payments on shell egg carload traffic and Column 6 shows the percentages that the annual egg claim payments are to the annual total claim payments on all carload freight traffic.

It will be noted that the claim payments on all carload traffic steadily increased to 594 per cent from 1939 to 1948, or from $14,050,135 to $97,448,436. Shell egg carload loss and damage claim declined from $141,209 in 1939 to an all-time low of $115,860 in 1941 or 18 per cent under that of 1939, and then began upward trend from 1942 to 1947, when it reached its peak of $2,295,121, or 1525 per cent over 1939. The 1948 claim payment total of $1,995,187, or 1313 percent over 1939, while comparatively high, is at least an indication that egg claims are on the downward trend. This declining trend shown for 1948 undoubtedly resulted from declining tonnage and perhaps a lesser volume of damage claims filed on shell egg shipments.

Because of the railroads' way of reporting claims paid, we are unable to determine the extent to which the payments shown on shell egg traffic were affected or kept comparatively high since 1945, by the disposition that may have been made of claims on traffic unsettled in the pre- [fol. 564] ceding years. Also, because of the fact that the carriers do not report claim payments on shell eggs properly related to the years in which the damaged shipments originate, we can only base our computations of average claim payments according to the volume of traffic or revenue received in the years in which those claims are actually reported as paid by carriers.

In using the aforementioned method of calculating an

average claim, some measure of distortion is evident by the appearance of higher claims per car. However, when consideration is given to the increased revenue received by carriers which results from heavier loading and higher freight charges, the seemingly excessive claims are, in effect, minimized to some extent by the net revenue derived by carriers after deducting the average revenue.

Page 42 of Exhibit No. 35 contains a statement showing for carload shell egg traffic the average revenue per car originated, average claim payments per car originated, and average net revenue per car after deducting average claim payments for the years 1939 to 1948 inclusive, with percentage relationship to the year 1939 as index 100.

The average net revenue per car shown under Column 6 from 1943 to 1948 inclusive, reflects the heavier loading factor and it appears that the rail carriers in 1948 received an average net revenue of 61 per cent more per car than in 1939, or a net revenue per car amounting to $356.92, as [fol. 565] compared with the 1939 net revenue of $221.66 per car.

It is understandable that, because of heavier loading, when cars of shell eggs were exposed to excessive impacts in switching, more egg damage per car resulted which, in turn, among other factors, increased the average claim per car. Consequently, a comparison of annual average claim payments per car of eggs between the prewar, war, and postwar periods is not a reasonable comparison to make because of the variations in tonnage loaded per car in the respective periods. I believe a more reasonable conclusion may be drawn from a comparison of tons transported.

Page 43 is a statement showing for carload shell egg traffic average revenue per ton originated; average claim payment per ton originated; and average net revenue per ton after deducting average claim payments for the years 1939 to 1948 inclusive, with percentage relationship to the year 1939 as index 100. Declining tonnage and increased claim amounts which were influenced in some measure by damages sustained in preceding years show, under Column 4, for the later years the seemingly unsatisfactory claim condition experienced by railroads. The average claim payments were computed on a per-ton basis, using the tons origi-

nated in the year in which the claim payments were actually made. Column 6, however, shows the average net revenue per ton after deducting the average amount of claim payments per ton and it will be noted that in 1947 and 1948 the [fol. 566] average net revenue exceeded the net revenue derived by the carriers for shell egg transportation in 1939.

Page 44 is a statement showing for carload shell egg traffic total revenue; total loss and damage claim payments; and net revenue after deducting claim payments for the years 1939 to 1948 inclusive, with percentage relationship to the year 1939 as index 100.

It will be noted, under Column 6, that the carload shell egg traffic net revenue since 1944 has been shrinking quite rapidly but still it remains relatively high as compared with the prewar period.

Notwithstanding the fact that claims, when settled, are paid from current earnings, it must be remembered that future earnings of the carriers will be jeopardized by the manner in which all freight and egg traffic is handled today. A review of the different causes generally responsible for loss and damage to freight may reveal the reason loss and damage claims on all freight and egg traffic skyrocketed during and since World War II, and it may very clearly point out what should be done in the immediate future to protect the future earnings of the carriers.

The attention of the Commission is now directed to page 45 and 46 of Exhibit No. 35, which contain a statement showing a summary of total loss and damage claim payments on all freight and shell egg carload and less-than-[fol. 567] carload traffic attributed to certain specific causes, as reported by the Freight Claim Division of the Association of American Railroads, for the years 1939 to 1948 inclusive, with percentage relationship to the year 1939 as index 100.

In the breakdown of the various specific causes, I have them segregated in part, according to the catch-all causes not chargeable to certain specified causes and according to specific causes directly related to carrier responsibility as admitted in the reports from which the statistics were compiled.

No one, I believe, can challenge the fact that the loss and

damage claims, in connection with the payments shown in this statement, were paid by the carriers only after the carriers were fully convinced that it was their own negligence that caused the loss and damage involved.

Page 45 shows the amounts of money involved in claims resulting from the unlocated or catch-all causes, including concealed loss and damage.

Page 46 shows the amounts of money involved in claims resulting from specific causes solely and directly related to carrier responsibility.

Lines 1 to 10 on both pages shows the amount of claim payments on all freight carload and less-than-carload combined, and lines 11 to 20, on both pages, show the amount of claim payments on shell egg traffic, carload and less-than-[fol. 568] carload combined. The alphabetical cause symbols are respectively explained in detail on page 50 of this exhibit; therefore, it will not be necessary for me to dwell upon all of them at this time. There is one, however, that no one must overlook and that is cause "E" reading:

> "Improper Handling in Trains, Yards, or Stations: Damage definitely due to rough or improper handling, loading, unloading or stowing, in cars, or on floor at warehouse or transfer shed."

The amount of money charged against this one specific cause on all freight and shell egg traffic will be found under Column 2 on page 46, and when comparing its index trend, shown under Column 3, with the index trends shown on page 35 of this exhibit, it will be noted that there is a definite correlation between rough handling and the total amount of money involved in all loss and damage claims on all freight and shell egg traffic since 1939.

For consideration of the amounts of loss and damage claim payments chargeable to specific causes on only carload traffic, the attention of the Commission is now directed to pages 47 and 48 of Exhibit No. 35. These pages consist of a statement showing a summary of total loss and damage claim payments on all freight and shell egg carload traffic attributed to certain specific causes as reported by the Freight Claim Division of the Association of American Railroads for the years 1939 to 1948 inclusive, with per-

[fol. 569] centage relationship to the year 1939 as index 100.

The breakdown of the various specific causes have been segregated on pages 47 and 48 similar to those shown on pages 45 and 46, respectively, and the qualifying remarks or explanation made in connection with the preceding pages also apply in connection with pages 47 and 48.

The amount of money charged against rough handling, etc., of all freight and shell egg carload traffic will be found under Column 2 on page 48, and when comparing its index trend, shown under Column 3, with the respective index trends shown on page 41 of this exhibit, it will also be noted that there is a definite correlation between rough handling and the total amount of all carload traffic loss and damage claim payments since 1939. These comparative trends will be shown in another statement.

It will be noted, under Column 4, that the "defective or unfit equipment" cause contributed substantially to loss and damage claim payments and Column 6, showing the amounts involved in claims paid for improper refrigeration or ventilation shows a skyrocketing trend since 1939. This cause also includes therein claims for the overflow of water from drip pipes. Freezing or heater failure, shown under Column 8, it appears reached into the stratosphere in 1948 as compared with prior years, particularly with reference to egg claims.

[fol. 570] "Delay" claim payments, shown under Column 10, besides being the result of loss and damage due to delay in movement or delivery of freight, also has included therein delay claims arising from car defects. Columns 4, 6, 8, and 10, therefore, strongly indicate that carriers' failure to provide suitable cars for the transportation of shell eggs was a major contributing factor to the excessive and abnormal loss and damage claim payments reported on shell egg traffic since 1944.

Prior to World War II, egg shippers could order refrigerator cars especially designed for egg transportation. As an outgrowth of the war, however, the establishment of the Refrigerator Car Pool under I.C.C. Service Order No. 95, effective November 9, 1942, denied shippers the privilege of using these special cars. Consequently, shippers of

eggs had to accept from the railroads any kind of a refrigerator car available at the time and place it was needed for shipment.

Claim payments resulting from "Theft of entire packages" shown under Column 12, since 1944 have increased greatly and is some indication of inadequate protection accorded by carriers to freight entrusted in their care.

"Train accident" claim payments which result from damage due to derailment or collision, shown under Column 16, account for a substantial part of the total loss and damage claim payments on all freight and shell egg traffic. This cause, together with "Error of Employees" shown under Column 20, represents a substantial part of claim payments [fol. 571] that perhaps could have been avoided if greater care had been exercised in the transportation of all freight, including eggs.

Page 49 is a statement showing the grand total claim payments on all carload freight and shell egg traffic and the percentage relationship thereto of the combined causes of damage attributed in part and specifically to railroad negligence for the years 1939 to 1948 inclusive. Also shown is the trend of percentagewise changes from the year 1939 as index 100.

This statement contains the recapitulation of the segregated causes shown on pages 47 and 48. In connection with all freight it will be noted under Columns 4 and 7 that the percentages of each combined group of causes varied very little in their relationship to the total causes from 1939 to 1948 inclusive. This is borne out in some measure by the index trends shown under Columns 5 and 8. The shell egg trends of percentage relationships of each combined group of causes, do not follow the pattern of trends for all freight. It will be noted that the carriers' percentages of the amount of claim payments in connection with causes attributable specifically to railroad negligence, from 1942 to 1946, assumed lesser proportions of the direct negligence volume than theretofore. In 1947 and 1948 the carriers assumed only slightly more than one-third of the 1939 percentage portion of the direct negligence volume, as shown by the index in Column 8. The figures shown on page 49 in [fol. 572] connection with shell egg traffic indicate to me

that the carriers, by reason of the wide variations shown, are not consistent in their assignment of claim payments to specific causes.

As stated heretofore, page 50 of this exhibit shows the causes for loss and damage by cause symbols which are explained in detail. In concluding my remarks covering the loss and damage claim payments according to principal causes, as reported by the carriers to the Freight Claim Division of the A.A.R., I wish to state that in connection with the 1948 claim payments, the Freight Claim Division reported in their circular No. 1381, dated May 2, 1949—File 300-9, "Only in part do these statistics represent claim payments made on traffic moving during that year. They more largely concern shipments handled prior thereto."

Egg claims, incidentally, which resulted from rail damages sustained on cars of eggs that originiated in 1944, were not settled until 1948. These claims, to my knowledge, represented many thousands of dollars and to what extent there may be unsettled, other egg claims on cars that originated in 1944, I do not know.

One of the major contributing factors largely responsible for the upward trend in loss and damage claims on carload shipments of shell eggs was, I believe, the minimum loading restrictions under Office of Defense Transportation General Order No. 18, which became effective on November [fol. 573] 1, 1942. Carload egg shippers throughout this entire country were affected by the O.D.T. order and in compliance therewith loaded more cases of eggs in cars than had been their general practice. This is evidenced on page 51 of Exhibit No. 35, which contains a statement showing the average number of tons and case equivalents per car of shell eggs originated for the United States and by regions for the period of 1939 to 1948 inclusive.

It will be noted in this statement that in the year of 1941, under Columns 2 and 3, the average load per car of shell eggs originated for the United States was 11.42 tons, or 431 cases. The heaviest loading per car by regions was New England, with 12.32 tons, or 465 cases, and the lightest loading was reported in the Pocahontas Region, showing 11.07 tons, or 418 cases, per car originated. In all regions, with the exception of New England, the loading of cars in-

creased in volume in 1942, and during 1944 and 1945, when the greatest volume of eggs was shipped by rail, it can be seen that most regions were loading heaviest. The trend showing the correlation between tons loaded per car and loss and damage claim payments on carload shell egg traffic indicates to me that heavier loading was a contributing factor responsible for the rising trend of claims.

Page 52 is a statement showing, for comparative purposes, on shell egg traffic, trends related to the year 1939 as index 100. Column 2 shows the index trend of total tons originated. Column 3 shows the index trend of average [fol. 574] tons loaded per car.. Column 4 shows the index trend of loss and damage claim payments on shell egg traffic. Column 3, when compared with Column 4, shows that under normal loading loss and damage claims were declining. In 1942, when the average load per car increased 7 per cent, the loss and damage claim payments on eggs for that year rose 18 per cent above the 1939 period and as loading per car increased the claim payments soared and did not show an improvement until 1948, I believe that in accordance with these figures an average of 11.42 tons per car is about the saturation point of safe loading for shell eggs, provided the cars are properly handled.

Column 5 shows the trend of the portion of carload shell egg traffic claims charged to rough handling by the carriers. The upward trend shown in this column began one year earlier than the heavier loading trend and it appears to me that the joining of these trends produced the trend shown in Column 4 on shell egg claim payments.

Column 6 showing the trend of the portion of egg traffic claims charged to "unlocated damage" to freight in packages, shows a reasonable correlation to rough handling and constitutes the major portion of total egg claims, which also accounts for its definite correlation to the total claim payments on egg traffic. On the whole, this statement shows that the great volume of tonnage loaded heavier than normally in cars subjected to excessive rough handling [fol. 575] was primarily responsible for the abnormal claim experience that followed.

The endeavors of the Department of Agriculture in 1945, 1946, and 1947, to bring about the return to prewar load-

ing levels of eggs transported in refrigerator cars, as a means toward reducing claims, were thwarted by representatives of the railroads who informed the office of Defense Transportation that they did not believe that the increasing claims were due to heavier loading. The carrier representatives were influenced perhaps by the savings carriers derived through the heavier loading of refrigerator cars. The heavier the load per car meant that less refrigerator cars were required to transport the tonnage available and the more cars saved meant a greater savings on car mileage payments by the carriers for the use of the refrigerator cars. This is borne out by page 53 of this exhibit, which is a statement showing the approximate annual savings to Class I railroads resulting from O.D.T. General Order No. 18-A, minimum loading restrictions applying on shell egg shipments loaded in refrigerator cars.

Column 2 shows the actual number of carloads originated. Column 3 shows the number of cars that would have been required if normally loaded at 11.42 tons per car. Column 4 shows the total number of refrigerator cars saved for the carriers by the heavy loading order. Column 5 shows the estimated round-trip per car in miles. Column 6 shows the mileage payments in cents per mile that the [fol. 576] carriers paid to refrigerator car owners for use of the equipment and Column 7 shows the approximate savings in dollars to the carriers that resulted from the heavy loading order.

The estimated average round-trip per car was adjusted to the changes in the average length of haul in the years shown. The average length of haul was determined within some measure of reasonableness by the average revenue carriers received per 100 pounds, also in the years shown.

This statement has been designed solely for the purpose of indicating to the Commission that the heavier loading of eggs, on the one hand, was a major contributing factor to the rising loss and damage claims; on the other hand, offset in some measure the consequent loss of egg traffic revenue through damage claims.

There are many other factors, I believe, that should be given due consideration in the analysis of the various

causes of, and possibly the solution for, the over-all loss and damage claim situation experienced by the railroads. The factors, in my opinion, which substantially affect and which will continue to affect, carloads of eggs in transit, will be found on page 54 of this exhibit. Page 54 is a statement showing freight train performance by operating averages of Class I railways in the United States for the years 1939 to 1948 inclusive, with the percentage relationship to the year 1939 as index 100. Also shown, for com- [fol. 577] parative purposes, is the ratio of total carload traffic to carload egg traffic and the approximate average length of haul per case of eggs to New York City for representative years.

The figures shown on this page are regarded by the carriers as an improvement in the efficiency and economy of operation and are considered as a major achievement of the railways.

Column 2 shows the overage number of tons loaded per car originated. From 1939 to 1941 a gradual increase in loading per car will be noted. In 1942, however, when the O.D.T. General Order became effective the rise in tons loaded per car was accelerated and has since remained relatively high with the peak shown for 1948, 13 per cent higher than in 1939.

The average number of cars per freight train length, excluding the caboose, is shown under Column 4. It will be noted that as the average load per car increased, as shown in Column 2, the more heavily loaded cars were increased in number per freight train length as shown in Column 4. The position of a carload of eggs when placed in a freight train has always been considered an important safety factor while in transit. Cars of eggs placed too near the rear end of a train are in an unfavorable position because shocks result from the taking up or closing up of the slack in all cars between it and the locomotive.

In 1948 the average freight train contained a peak of 54.5 [fol. 578] freight carrying cars, 12 per cent above the 1939 average of 48.5 cars. The peak previous to 1948 was in 1944 when the greatest volume of eggs was transported by rail.

The average freight train load, in tons, is shown under

Column 6, and it will be noted that in 1948 a peak of 1,176 tons was carried per average train-load, or 45 per cent above the 1939 level of 813 tons per train. The years from 1942 to 1947 also show substantial increases in average tons per freight train-load, which range from 27 to 41 per cent above the 1939 level.

Column 8 showing the average speed of freight trains in miles per hour, indicates to me that the heavier trains caused a slight decline of speed from 1942 to 1945, but it appears that the carriers, despite the heavier trains, are moving at a faster pace than during the war and undoubtedly will reach or pass the 1939 speed of 16.7 miles per hour in the near future.

For comparative purposes there is also shown on this page, under Column 10, the ratio of total traffic to egg traffic in carloads, and under Column 12, the approximate average length of haul per case to New York City. In making a comparison of all the columns on the page, I conclude that eggs are hauled long distances in a volume that is far surpassed by other freight which is made up of more and heavier cars traveling at a pace, under such conditions, that may not be conducive toward safe transportation. As long as these factors exist, in my opinion, [fol. 579] claims on all freight, including eggs, will remain relatively high as compared with prewar experience and the current Special Regulations under investigation can only tend to circumvent the payments of damage and not eliminate the causes thereof.

The rail carriers serving New York City and its surrounding area were ardent proponents of the changes that were made in the Special Regulations covering egg transportation. As compared with carriers serving markets in other parts of the country, the carriers serving New York seemed to be bearing the burden of the volume of loss and damage claims on eggs. This is understandable when due consideration is given to the fact that New York City is the largest egg market in the United States and, as such, receives more eggs by rail than any other market. Pages 18 and 19 of this exhibit bear out this fact.

Some of the carriers serving New York, we understand, are finding that their egg claim experience is not consistent

with the national experience. This may be due to the fact that some of the Eastern roads carried their peak volume in carloads and egg tonnage in periods later than the national peak volumes in carloads and in tons, which would account for the continued upward trend in claim volume after the national claim volume began its downward trend.

In support of this explanation, the Commission's attention is now directed to pages 55 and 56 of this exhibit, which [fol. 580] is a statement showing for six representative Eastern railroads serving New York City, N. Y., the trend of egg traffic volume, individually and collectively carried, in carloads, tons, revenue, average tons per car, average revenue per car, per ton, and per 100 pounds, for the years 1939 to 1948 inclusive, with percentage relationship to the year 1939 as index 100.

The six railroads covered in this statement are the Baltimore and Ohio, Delaware, Lackawanna and Western, Erie, Lehigh Valley, New York Central, and the Pennsylvania Railroad. These roads operate in the same general area between Chicago and St. Louis, on the one hand, and New York City, on the other, with the exception of the Lehigh Valley and the D. L. & W., which operate between Buffalo and New York over trackage approximately half that of the other four railroads.

It will be noted on page 56 that the United States total volume of egg traffic reached its peak in 1944 in carloads and tons originated, revenue received, and heaviest average loading per car. Individually, the six roads as shown beginning on page 55, reached their peak volumes in egg traffic in other years; for example, the Baltimore and Ohio Railroad carried its peak carloads and tons of eggs in 1945, reached its peak revenue on eggs in 1946, and transported the heaviest egg loads in 1944.

The D. L. & W. R. R. carried its peak volume of carloads of eggs in 1941, its peak tonnage in 1945, reached its peak [fol. 581] revenue in 1947, and carried egg cars loaded, on the average, heaviest in 1945.

The Erie Railroad carried its peak volume of carloads and tons and reached its peak revenue on eggs in 1946. Its egg cars on the average were loaded heaviest in 1945.

The Lehigh Valley R. R. carried its peak carloads and

tons and reached its peak revenue on eggs in 1941. The egg cars transported by the Lehigh Valley, on the average, were loaded heaviest in 1946.

The New York Central carried its peak volume in car loads in 1939, its peak tonnage in 1945, reached its peak revenue in 1946, and carried egg cars loaded, on the average, heaviest in 1945.

The Pennsylvania Railroad carried its peak volume of eggs in carloads and tons, reached its peak revenue and carried eggs loaded in cars, on the average, heaviest in 1945.

Collectively, the statistics show for these six roads their greatest volume of carloads of eggs were carried in 1941, their greatest volume of tonnage was carried and peak revenue was reached, and cars, on the average, were loaded heaviest in 1945.

The only fact shown in this entire statement which is uniform is that individually, collectively, and naturally, the peak of the average revenue per car, per ton, and per 100 pounds, was reached in 1948.

[fol. 582] When this statement is viewed in the light of all the variables shown in connection with each road's egg traffic volume experience, it may be concluded that the separate experience by each road occurred at different times under, perhaps, different conditions. Therefore, in my opinion, I do not believe that regulations designed for general application in order to overcome exceptions that may arise, can serve any useful purpose other than, perhaps eliminating claim payments but not the causes thereof.

It will be noted under Columns 15 and 16 on page 56 that the six representative Eastern railroads participated in carrying more than 56 per cent of the total number of carloads and tons of shell eggs originating in the United States in 1948. It will also be noted that they participated in carrying much less than what appears to be their normal share during 1944 when most railroads were carrying their peak volume of egg traffic. Since 1944 their percentage of carloads and tons carried to the U. S. total carloads and tons originated has been steadily increasing but, in view of the widespread diversion from the rails of egg traffic shipped to New York City, which in part was greatly

accelerated by the Special Regulations effective July 24, 1948, the future volume of egg traffic carried by the six Eastern railroads, I believe, will be in much lesser proportions of the total volume originated than that shown in 1944.

[fol. 583] Page 57 of this exhibit is a statement showing comparison of carloads, tons, and revenue on egg traffic between six representative Eastern railroads and U. S. total egg traffic including duplications, and percentage of revenue to U. S. total egg revenue for the period 1939 to 1948 inclusive.

The six Eastern Railroads referred to herein are the same six roads mentioned in connection with pages 55 and 56 of this exhibit.

It will be noted that the U. S. total carloads and tons include duplications of the reported U. S. egg traffic carried by the Class I railways. The percentages that the carloads and tons carried by the six roads to the total U. S. volume of carloads and tons, including duplications, are shown under Columns 4 and 7, respectively.

Column 9 shows the revenue received by the six Eastern roads on the egg traffic they carried as compared with the U. S. total revenue received by all the Class I railroads, as shown under Column 8.

Column 10 shows the percentage that the six Eastern roads' revenue is to the total U. S. revenue, and it will be noted that it represents a very substantial part of the revenue received by all Class I railroads. Consequently, it is my belief that, if claims result on the egg traffic and the six Eastern carriers pay out more money in connection with these claims than other carriers, it is evidently because the six roads transport the cars over the major portion of the through haul and in return perhaps receive [fol. 584] the major portion of the through charges in connection with the movements involved.

That concludes my direct testimony.

Commr. Mitchell: Is that all, Mr. Matson?

Mr. Matson: Yes, sir.

Commr. Mitchell: All right, Mr. Staley.

Mr. Staley: I call Mr. Dell.

LLOYD C. DELL was sworn and testified as follows:

Commr. Mitchell: Will you give your name?
The Witness: Lloyd C. Dell.

Direct examination.

By Mr. Staley:

Q. Go ahead, Mr. Dell.

A. I have a prepared statement here I would like to read.

My name is Lloyd C. Dell, 1202 Jones Street, Omaha, Nebraska, and I am General Traffic Manager of and represent Fairmont Food Company, Omaha, Nebraska. I have been in the Traffic Department of the Fairmont Foods Company, and its predecessor company—The Fairmont Creamery Company since 1918. Prior to that time I was in the local agency service of the Burlington Railroad. My duties have to do with handling of claim matters, rate adjustments, transit accounts, bills of lading and other varied matters pertaining to a modern traffic department.

Fairmont Foods Company makes thousands of egg shipments annually from plants scattered throughout the middle west and southwest to destinations throughout the [fol. 585] United States and for export to such countries as Cuba, Mexico, the United Kingdom and in Europe. Until the war stopped the service we shipped hundreds of cars containing shell eggs, Rail, Lake and Rail via boat lines Duluth to Buffalo using rail lines west of Duluth and east of Buffalo. Such shipments required transfer from car to boat and from boat to car. In all this handling, for years our claim record ran less than $1.00 per carload. Eggs at that time were packed with the old style slotted strawboard fillers which gave the eggs very little protection. Eggs today are packed in modern fillers and moulded flats. Each egg is at all times separately contained and protected. With this protection a broken egg does not run down through the case and soften up the fillers.

There are many egg breaking plants scattered throughout the territory which provide a ready market during surplus production for the extra large, extra small, dirties

and checked eggs; eggs of this class, together with many shipments of Current Receipts, go into breaking stock.

Tracing the background of claim payments per car on traffic handled by the rail carriers for my firm, I shall start with the year 1947 when I commenced keeping precise running records of damages occurring and then on down through October 31, 1949.

In 1947 our claims on shell eggs averaged $6.08 per car. In 1948 claims jumped to $19.62 per car, and for ten months [fol. 586] of 1949 our average claim payment was $3.05 per car. This compares with the National Average for the year 1947 for all Class One Railroads as reported by the AAR of $85.64 per car, and for 1948 of $90.23 per car.

The AAR reports show for the first two quarters of 1949 a payment averaging $100.38 per car.

Briefly running back on the AAR reports the claim payments per car show nationally—1941: $3.15, 1942: $4.79, 1943: $10.37, 1944: $13.41, 1945: $28.80, 1946: $54.40, 1947: $85.64, 1948: $90.23.

These figures represent an economic loss which I feel should be averted by proper co-operation between the shipper paying the freight charges and the having of his capital tied up, on the one hand, and the rail carriers on the other hand, rather than requiring the shipper to stand a tolerance penalty that is now before us.

When we discovered that our claims per car for 1948 were greatly exceeding those of 1947, we immediately started an investigation to find the reason for it.

We checked the first six months of 1948 and found that we had moved 309 cars of eggs from our midwestern branches to various destinations throughout the United States and for export. Of these, 53 cars contained less than 600 cases out of which we had 4 claims with average per car of $3.59, while from the remaining 256 cars containing 600 cases each, we had 34 claims with average per [fol. 587] car of $24.95. We then took the number of each car on which we had a claim and wrote to the owner for its age. We found that all 38 cars on which we had claims were originally built from 1917 to 1931.

We were so convinced that the age of the car had much to do with creating claims that we immediately requested

our various branches to check the stencil date on the side of each car offered for loading and make certain it had been built or rebuilt within recent years before loading with shell eggs, otherwise to reject it.

I would like to add, however, that in addition to the excessive damage resulting from old cars, the rough and careless switching of the egg cars is the cause of many claims. I have seen——

Mr. Zearfaus: That is objected to.

Mr. McDonald: Mr. Commissioner, I would like to object to that statement and the balance that follows on the ground that it does not relate to specific instances and obviously part of it is hearsay and a lot of it is purely conjectural.

Commr. Mitchell: Here is a witness of thirty years' experience, traffic manager for a graded egg house.

Go ahead, Mr. Dell; you may continue.

A. (Continuing): I have seen, and have had many of my associates report to me, the fact that egg cars are bumped so hard in switching that they fly up in the air with terrific [fol. 588] force, with great force.

And, gentlemen, right now I would like to make this statement, that I myself, have seen a refrigerator car, it might not have been eggs, but it was a refrigerator car switched so hard that it almost left the rails. It hit a string of standing cars. That could be eggs, or it could be anything else, but it was refrigerator cars.

If a modern transport truck was to be struck by another object as hard as some of our railroad egg cars are struck in switching, the truck would be considered a wreck, as it could not stand the impact. The fact that a truck can not stand such rough handling, undoubtedly is the reason why the damage is so much less when eggs are moved by truck. Eggs, no matter how carefully they are packed, can not stand the handling they sometimes get in the average railroad car during switching.

Our claims, however, for entire year 1948 averaged $19.62 per car.

In the latter part of 1948 and throughout 1949 better cars were used for our egg shipments, and our per car

average claim for the period January 1st to October 31st, 1949 is $3.05.

It is common knowledge in the industry that prior to 1941 better cars were furnished shippers for egg loading and train crews gave such cars more attention than they do at the present time. During war years, 1941 to 1945, every available car was pressed into service and shippers were obliged to use cars furnished by carriers. O. D. T. reg-
[fol. 589] ulations compelled the egg shipper to increase his egg load from the usual 400 case unit to 600 cases per car. Due to shortage of egg case material, cases were re-used instead of new cases being used for each shipment.

At present new cases, new fillers, flats and cushions are required without imposition of a rate penalty and prevent considerable damage that may have been present in the usual run of egg traffic in war years. With the various rate increases on the Railroads which were not followed by the truck lines an increasing amount of this business has gone to Over-the-road carriers.

The latter's claim record with my concern has been very good, for example, in 1948 it represents only 34¢ per load handled; in 1949 for ten months, including 4 loads that encountered traffic mishaps, our claim account amounted to only 89.4¢ per load handled.

We, therefore, believe that if the carriers pay more attention to the type of refrigerator car furnished the shipper and the shipper pay more attention to the type of car he loads, egg claim payments can be considerably reduced. The railroad shipping firms should not be subjected to any tolerance penalty on this egg traffic any more than the general line of traffic that is handled by the railroads as common carriers.

[fol. 590] By Mr. Staley:

Q. Mr. Dell, early in your statement you gave some figures of egg claims in cars shipped. Was that figure based on the claims made in 1948 or on shipments made in 1948?

A. Those were claims based on cars that moved in 1947. They could have been paid in '48, but this covers the '47 cars.

Q. Did you trace all your claims back and mass them against your shipments?

A. That is right.

Q. Calling your attention to the latter part of your testimony, where you testified to the lower claim rate, where it was handled by truck, can you give the Commission some idea as to the average length of haul of those truck shipments?

A. Yes. We move eggs from our W. T. L. branches to all parts of the United States, from the Atlantic to the Pacific.

Commr. Mitchell: What are the W. T. L. branches?

The Witness: That is the western trunk line branches.

A. (Continuing:) We also move some eggs to Texas, along the Gulf, and to Florida.

Q. Generally speaking, would you say that those truck hauls are comparable to the rail hauls, where the eggs are shipped by rail?

A. The same thing, exactly.

Q. Can you give the Commission some idea as to the extent to which you use the trucks; that is, is it only a few truck loads during the year or is it up in the hundreds?

[fol. 591] A. At the present time mostly on account of the difference in rates and a lot of the egg damage, I would say that the trucks were handling about probably 45 to 50 per cent of our business until we got into 1949, when trucks are taking at least 70 per cent of our egg shipments.

Q. With respect to these figures that you compile on the claims per car, do all claims against any Fairmont Company shipments come through your office?

A. Yes, they do. They are all filed with us.

Q. So that those figures are accurate figures reflecting all claims against all shipments made by your company?

A. I might state that any branch that we have, which number in the neighborhood of 100, any claim that they might have is carried directly to my department, so we know—they get immediate credit.

Commr. Mitchell: Cross-examination.

Cross-examination.

By Mr. Knowlton:

Q. Are these cars owned by Swift & Company or Armour & Company?

A. No, Mr. Knowlton. You are talking of the old cars?

Q. Yes.

A. I do not believe, as I recall, that there was any packer car in there. They were cars of most every line, I might imagine, PFE, WFE, FGE, NWX, ART, and others.

Q. And what are the cars since then; the same?

[fol. 592] A. They were much the same, but they were the improved cars. They had been rebuilt, and the only place you can get that is from the owner, himself, or the stencil on the side of the car, and that is what I directed our branches to insist on.

Mr. Knowlton: That is all, thank you.

By Mr. Zearfaus:

Q. Do you ship the so-called current receipt eggs?

A. No. But if we do ship any, they go by truck.

Q. Then these payments you refer to in connection with shipments are all in connection with repacked eggs?

A. That is right.

Q. When did you issue the instructions to the agents with reference to the railroad cars?

A. I stated that when we noted our claims for 1948 were increasing so rapidly over 1947 we knew something was wrong. I, myself, made this investigation. Up to that time the majority of our eggs were moving, that is, a good portion of them was moving by rail on account of various transit arrangements, with the railroads, and when the truck lines started to cut in there we were compelled to use truck on account of competition.

Q. When did you make the investigation; that is, when did you inquire and ask that you be given what you term better cars, newer cars?

A. I made that investigation—oh, it was around the [fol. 593] latter half of '48.

Q. The latter half of 1948?

A. Yes, sir.

Mr. Zearfaus: That is all, thank you.

By Mr. McDonald:

Q. Mr. Dell, how much of your traffic would you say was destined for the New York market; what percentage, approximately?

A. The only eggs that we put into the New York market are for export.

Q. And what percentage of your total would that be? Approximately, if you can give us any idea?

A. That would be low in comparison. I imagine we put in probably around 85 to 100 railroad cars per year. We have had no loss and damage claims on any of those export cars.

Q. Would New York be the chief port of export?

A. Yes. I believe we had a few out of Montreal.

Q. Is there any difference in the packing of shipments destined for export?

A. Well, they are all in wooden cases. They are all wood.

Q. Instead of some wood and some fiber?

A. Yes. And then, the size of the car—an export car consists of 500 cases. That is the way you buy space on the boat, in units of 500.

Q. Are the cases, themselves, strapped, are they?

A. Yes, they are.

[fol. 594] Q. That is different from the domestic shipment, is it not?

A. That is right.

Q. Is the bracing of the shipment in the car any different from the domestic shipment?

A. No, sir.

Q. You mentioned a moment ago some sort of transit arrangements. What sort of transit arrangements did you have in mind?

A. Well, take the transit on eggs. If you bring eggs in from some point beyond our storage point, they would store —we have the privilege of storing eggs for twelve months and shipping them out. When those move they have to move by rail, and they move at the balance of the through rate plus your transit charge at storage point.

Q. Do most of your shipments move in straight carloads of eggs or are they mixed cars?

A. We do move some mixed cars, but this all relates to straight cars of eggs.

Mr. McDonald: That is all.

By Mr. Canny:

Q. Mr. Dell, this $6.08 per car, is that based on shipments made in 1947?

A. Yes, they are based on shipments made in 1947.

Q. They might have been made in 1948?

A. Yes, sir.

Commr. Mitchell: I thought you said you checked those back on each year.

[fol. 595] The Witness: No, this covers claims for 1947. Those could be paid at a later time. But I have the amount of the claim in there, Mr. Commissioner, to arrive at that.

Now, if that claim was turned down for any reason, that would be still less.

Commr. Mitchell: I see. This is the total amount of your claim?

The Witness: That is the total amount of our claim, yes, sir.

Commr. Mitchell: All right.

By Mr. Canny:

Q. Then you were not comparing like with like when you said, "This compares with the National Average for the year 1947 for all Class I railroads as reported by the AAR of $85.64 per car?" In other words, those reported by AAR might have been in 1946, but paid in 1947?

A. As a matter of fact, I think a lot of these AAR figures were in payment of cars or claims on cars that moved several years prior.

Q. That is true? Then you are not comparing like with like, are you?

A. No, I am comparing what our statement shows.

Q. Do you have any reason to believe that your cars received more gentle or careful handling than other shippers' of eggs?

A. No, but I do think from our record and from the types

of cars we insist on loading at all of our branches, it has [fol. 596] reduced our claims.

Q. But you only report $6.08 per car in 1947 as against $85.64 for the country as a whole. How do you account for the big difference? Are you getting preferential treatment?

A. I cannot account for it. I am giving you simply the Fairmont Food Company's records.

Mr. Canny: That is all, thank you.

Examination by the Commissioner.

By Commr. Mitchell: Let us find out about that. How many cars did you ship into New York in 1948?

A. Oh, in 1948 I would say anywhere from 85 to 100 carloads.

Q. And they were all for export, in wooden cases?

A. That is right.

Q. And the others were for around the country?

A. That is right.

Q. Do you know the total amount of damage claims for New York City?

A. I know what they tell me.

Q. I am trying to show why the difference. You did not ship any eggs into New York except the export eggs which were shipped in wooden boxes?

A. They were still eggs, Mr. Commissioner, shipped by rail.

Q. But the big damage claim for eggs is for those shipped to New York City?

A. That is right.

[fol. 597] Q. How many carloads did your company ship to New York City in 1947?

A. Around 1000 cars.

Q. Was that in 1947?

A. That is right.

Q. How about 1948?

A. The same.

Q. And 1949?

A. I had the figures for ten months, and I think it was somewhere around 600 cars.

Eggs are an exempt commodity, and we can make any

kind of a rate that is agreeable to the trucker. We usually pay him so much per case, except the common carrier. We use a lot of common carrier trucks on eggs, and that is less then the rail; even the cost of refrigeration on these makes some difference.

Q. From the cost of refrigeration on rails?

A. That is right.

Q. The truckers furnish the refrigeration, don't they?

A. That is right; the average common carrier truck's rate will run approximately the same as rail, but in some cases it will run, I would say, ten per cent under.

Q. Your main reason for using the truck, as I understand it,—Fairmont Food Company's main reason is because you can get a better rate?

A. We get a better rate and it is a quicker service.

[fol. 598] Q. Quicker service?

A. Yes, sir. We have had loads that moved from Oklahoma to the west coast, not only once but many times—a truck will leave there on a Monday or Tuesday—we will say on a Monday, and the following Monday he is back for another load of eggs. You cannot do that by rail—you cannot do it to the east coast by rail.

Commr. Mitchell: Perhaps we had better have some of our men look into how you do it. They are not exempt from safety regulations.

The Witness: I am trying here to give you the facts.

Commr. Mitchell: That is what we want, the facts.

Mr. Canny: I have some additional questions.

By Mr. Canny:

Q. Mr. Dell, what do you think is the reason why your claims are so much less per car on damage to eggs than the country as a whole, or nationally? Do you think you pack them better; or what?

A: Well, when you are in business you try to improve that business you are in, and that is exactly what we are doing with Fairmont. I try to improve every branch of our traffic department. If I can put eggs down to the Atlantic Seaboard or to the west coast at rates that will run $150 a car less, I am certainly going to do it.

Q. You have not answered my question. I asked you what reason can you give as to why your loss and damage [fol. 599] claims on eggs are so much less than the country as a whole?

A. I will answer that by saying that we pay more attention to the type of car.

Q. How about the packing of the eggs?

A. The eggs are packed just like we have always packed them, only they are in better containers.

Q. How about loading?

A. Loading is the same, no different.

Q. How about the bracing?

A. The bracing is no different.

Q. Do you ship to New York City?

A. No.

Q. Just destination New York?

A. No.

Q. Why is that?

A. We just do not do it; that is all.

Q. You ship to all other places in the country?

A. Pretty much all over, yes, sir.

Q. Is New York City the only place you do not ship to?

A. No, there are other places we do not ship to. We figure *are* exports are the only things that come in here. We simply do not put the other eggs in there; that is all.

Q. How about Philadelphia? Do you ship to Philadelphia?

A. Yes, we do, and that is where most of our claims are, Philadelphia and Baltimore.

[fol. 600] Q. How big must a claim be before you file a damage claim with the railroad? Do you have any set amounts?

A. We do not get right down to the very egg, but whatever our branches charge Omaha with is what we file a claim for.

Mr. Canny: That is all I have.

Commr. Mitchell: Thank you, Mr. Dell, that is all.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Staley: I call Mr. Ford.

GILBERT F. FORD was sworn and testified as follows:

Commr. Mitchell: Mr. Blanchard wants to offer an exhibit which was prepared by an accountant for Armour & Company. Mr. Blanchard will make a statement in regard to the exhibit, and it will be received here with the right of cross examination if desired at the later hearing, and with the right of objection thereto. Mr. Blanchard is unable to locate his witness, and if there is no objection it will be done that way.

Do the railroads have any objection?

Mr. Blanchard: Perhaps if I described it on the record——

Commr. Mitchell: Go ahead, Mr. Blanchard.

Mr. Blanchard: The exhibit which I spoke to the Commissioner about is nothing but a "Study of all carload shipments of eggs made by Armour & Company at its branch houses."

The witness I expected was the accounting witness who [fol. 601] went through the machinery of assembling the claim figures on all of those shipments. I will have the witness here shortly, but I would like to exhibit it and have a sworn statement attached to the record to the effect that anyone, after having looked over the exhibit, can cross-examine and object to the exhibit.

Commr. Mitchell. Is there objection to that exhibit?

(No response.)

Commr. Mitchell: You may bring in your exhibit and we will handle it that way.

Direct examination.

By Mr. Staley:

Q. State your name and occupation, please.

A. Gilbert Ford, I am with Swift & Company, an Illinois corporation generally engaged in the handling and processing of eggs at various parts of the United States. I am in charge of the Rate Division of the General Transportation Department of Swift & Company, in Chicago, and have

general supervision over all rate and classification matters, and have had special and particular jurisdiction over all egg rules and egg packing for Swift & Company for many years, and have been with Swift & Company for thirty years.

Q. What was your prior employment?

A. Prior to that, I was with the Louisville and Nashville Railroad Company, in the Traffic Department, for a period of ten years.

Q. During that time, your duties have been in connection with transportation matter, including the shipment of eggs and other poultry commodities, with Swift & Company?

[fol. 601-A] A. My duties have been in connection with rate and traffic matters, and specifically in connection with handling of claims, classification rules, and egg shipments, and classification matters in connection with rule changes.

Q. Approximately how many dairy and poultry plants does Swift & Company have which collect, repack and rehandle and reship shell eggs?

[fol. 602] A. About eighty.

Q. And generally speaking where are those plants located?

A. They are located in most parts of the United States. We have them in this general seaboard area; we have them in Ohio, Indiana, Michigan and Illinois; we have them in the southern states, Tennessee, Mississippi, and so forth; and then we have them in practically all of the western trunk line states and southwestern states. I do not believe we have one in Arkansas. We have them in Pacific Coast states, including Idaho, Montana.

Q. Where are the bulk of the plants located, in what general section?

A. Western trunk line territory.

Q. Where are the eggs which are shipped from those plants marketed, generally speaking?

A. East of the Buffalo-Pittsburgh line, or western terminii.

Q. But they are shipped to all destinations generally throughout the United States?

A. From that territory we ship to practically all areas of the United States.

Q. From where do the eggs come, to one of these dairy and poultry plants?

A. They either come in by the farmers' own equipment or our pickup trucks, generally speaking, bringing them into our plants.

Q. Do they come in generally from an area of a hundred or 150 miles, generally speaking?

[fol. 603]. A. Or less.

Q. How would you describe those eggs as they come into the plant? What kind are they?

A. They are what we normally understand to be current receipts. They are just as the eggs are picked up on the farm, I should say.

Q. Describe what happens to those eggs after they are unloaded at the dairy and poultry plant.

A. They go into our dairy and poultry plants. They are there checked, and all of the broken eggs, eggs that won't grade or eggs that are oversized or undersized, are removed. Then they go to the candlers and they are candled, graded.

Q. At this point let me ask you this question: What happens to these eggs that are broken or undersized or oversized, that are separated from the run-of-the-nest eggs? What happens to them?

A. They are broken in at that point, or hauled to our nearest plant that does break eggs for freezing or drying.

Q. Now tell us what happens to the rest of the eggs from which the small and the large and the broken ones have been separated?

A. They go to candlers, and they are candled for quality, checks, or anything that we cannot determine that is wrong with the egg in the first handling, and the candlers determine checks and quality. Then we load into cases according to the grade.

[fol. 604] Q. When the candler is candling the eggs, can he tell whether or not the air bubble is the right size to make a certain grade?

A. That is right.

Q. And can he tell whether the membrane surrounding the yellow of the egg is broken?

A. Yes.

Q. Can he see checks in the egg?

A. Generally.

Q. And he certainly can detect a break in the shell?

A. Oh, yes.

Q. When he packs these eggs into the various grades does he have cases around in which he puts them, and other containers?

A. Yes.

Q. Are any broken eggs packed into those cases?

A. No.

Q. Are any cracked eggs packed into those cases?

A. No.

Q. Are any checked eggs packed into those cases?

A. No, checked eggs are packed into those cases, and I mean those that would appear by candling, and that is the finest way to develop whether an egg is checked.

Q. When the case is filled, what happens to it there?

A. The cover is put on and it is sent on a truck to the storeroom or to the car, if they are loading a car at that particular time.

[fol. 605] Q. The storeroom usually is immediately adjoining the egg handling position, is it not?

A. Yes.

Q. And then, how does it get into the rail car? Describe if you will, the type of supervision it has while it is being moved.

A. All of the candling and checking operation in the candling room is under the supervision of a foreman. All of the work is done under his direct supervision. The eggs are moved to the storeroom. Of they are held in the storeroom for a day or two they are candled in the storeroom under the supervision of a checker or a foreman. When they are moved from the storeroom to the dock for loading into the car, that is under the supervision of the checker who is loading the car.

Q. Is that checker usually a supervisory employee with some experience in those matters?

A. He is.

Q. What kind of cases are used ordinarily?

A. We use both wood and fibre.

Q. You have spoken of fillers and flats. Are those new or used fillers? Are the flats new or used?

A. Always new. And the cases are always new.

Q. What kind of fillers are used?

A. Well, we are using the mapes, the latest type of mapes flat and the standard fillers, as required by the classification—

[fol. 606] Q. Is that in your opinion the most up to date and satisfactory type of filler and flat to use?

A. It is.

Q. Were some tests at one time conducted from which you determined that those contribute to the safe transportation of the eggs?

A. Well, in the 1920's, the railroads in cooperation with certain shipping interests, not being satisfied with the handling of eggs in the flats and fillers and cases in use at that time, had quite an extensive investigation made, particularly in western trunk line territory as loading points and to destinations generally in the east.

At that time two of Swift & Company's representatives, one man from our operating department, who had supervision over all egg operations, and one man from the transportation department, joined with a representative of the Western Weighing and Inspection Bureau, Mr. Fry, and they participated in tests. These men went to the loading plants, saw the eggs loaded, they rode the trains to destination, and checked them out to destination.

Following those tests the Mapes Cup Flat, as we know it today, was adopted, and that flat, with some modifications, is in use today.

Q. That, in your opinion, is the safest type of flat to use and results in the least possible damage?

[fol. 607] A. Yes.

Q. Mr. Ford, you prepared your testimony in written form, the main portion of it, have you not?

A. Yes.

Mr. Staley: I would like to have two exhibits that I have circulated marked for identification, one of which is Statement of Swift & Company Damage Claims Filed with Rail Common Carriers for Period August 8, 1947, to August 1, 1948.

Commr. Mitchell: That will be marked Exhibit No. 36.

(Swift & Company Exhibit No. 36, Witness Ford, marked for identification.)

Commr. Mitchell: The next exhibit will be No. 37.

(Swift & Company Exhibit No. 37, Witness Ford, marked for identification.)

By Mr. Staley:

Q. Will you read your testimony now, Mr. Ford.

A. Swift & Company, an Illinois Corporation, is generally engaged in the handling and processing of eggs at various points in the United States and is a large distributor of eggs through its branch houses located in practically every state in the Union.

Prior to the year 1949, practically all of our eggs moved in rail service and about one million cases per year were transported in straight carloads. In addition to this a very large quantity of our eggs is transported in mixed carloads containing dressed poultry, butter and eggs, and occasionally cheese. The quantity of eggs in each such [fol. 608] mixed car varies from a very small quantity to a very high percentage of the entire load.

We have assembled some figures which represent our claims filed against the railroads and in each instance the claims represent all of our claims on eggs in carloads whether it was a straight carload of eggs or a car containing eggs and other commodities. Our reference to number of cars of eggs shipped is always confined to the straight carloads of eggs, except in the instance where I have referred to 6,000 carloads, in which case I have estimated the number of carloads based upon an average loading of 400 cases.

Such a figure must not be considered as representing our straight carloads of eggs, or even the total number of cars containing eggs; it merely represents our average number of cases divided by 400, and it is quite possible that the eggs that are not in straight carloads might be distributed through as many as ten or twelve thousand cars.

Our eggs are shipped in carloads to our branches and a rather large per cent moves to the New York area; however, there are many carloads, both straight and mixed, to destinations in the other states.

Our interest in this proceeding is to see that the kind of eggs we offer the carriers at origin are delivered at destination in substantially the same condition as offered to the carriers; and if they do not arrive in that condition, [fol. 609] we expect the carriers to pay us the damage resulting from their acts.

Generally speaking, we have little information concerning the claim situation at New York because, really, our claims are low; certainly, far below the average of all claims at New York. In fact, our claims are far below the United States average as will be shown in the exhibit to be offered.

We do know, however, that following tests in the packing of eggs in the early 1920's, the egg claim situation became the most unimportant feature of the business, and by 1941 had gotten to the point where it amounted to about $3.00 per car; however, beginning with the war years, the condition has become increasingly serious, and has become so serious that we have had to give consideration to the diversion of our traffic to other forms of transportation.

We have not increased our handling of eggs to any appreciable extent over the last ten years. However, our claims have gone up to the point where it is dangerous to our business, because we want eggs at destination to fill an order and we do not want that order interfered with by having to file a railroad claim.

During the year 1949, we had two factors that required a change in our method of handling: first, the serious claim situation, and second, the high rates charged by the rail carriers.

In the hearings before the Interstate Commerce Com- [fol. 610] mission in Ex Parte 168, I prepared an exhibit which showed the extreme diversion of traffic from the railroads to the trucks, but the diversion of long haul shipments of eggs did not really become effective until we had prepared this exhibit showing the cost by rail and by truck.

Many of the rates were found to be as much as 50¢ per hundred pounds higher by rail than by truck.

Some of the least important of these differences where we have diverted the traffic to trucks are, for instance, from Sioux City, Iowa to Baltimore, Maryland, for a total cost by truck of 166½¢, but by rail the rate is 189¢; from Marengo, Iowa to Boston, Massachusetts, the truck rate is 150½¢, while the rail rate is 170¢.

It must be recognized that the truck rates include the cost of refrigeration but the rail rates must be increased by some 25¢ or 30¢ to give the normal refrigeration service required.

Commr. Mitchell: Do you use common carrier trucks between Sioux City and Baltimore and Marengo?

The Witness: We use common carrier, contract and exempt. We are using all three types of carriers.

Commr. Mitchell: Under the exempt, you can make any kind of a deal you want to, can't you?

The Witness: That is right. The rates I have quoted are not exempt rates, however. They are contract rates.

Commr. Mitchell: Thank you. Go ahead, Mr. Ford.

[fol. 611] A. (Continuing:) Thus, even on these illustrations, which are lower than the average, there is a difference of about 50¢ per hundred pounds, or 25¢ per case.

In the collecting, packing, and shipping of eggs, we find that 15¢ per case is a reasonable profit; this results in ½¢ per dozen profit. In view of this low margin of profit, the shippers of this country cannot afford to have claims for damage and they must utilize every means at their command to eliminate them.

We have had very serious claims and the cars have borne unmistakable evidence of rough handling by the carriers; in fact, one recent car was kicked so hard by the switch engine that it tore out the bumping post and tore out 50 feet of brick wall in a one story building adjoining the track, and knocked the end out of the car.

I do not suggest that this is the average handling accorded eggs, but we receive many cars where there is evidence of rough handling which generally, from our experience, indicates rough handling by the switching crews.

We pack only standard grade eggs; in fact, at quite a

few of our plants, all cars are shipped subject to U. S. D. A. grading. We do not ship in general commerce eggs that fail to meet standard grades. Normally, oversize and undersize eggs, dirties and checks, are either broken at the assembly plant and dried or frozen, or they are loaded into [fol. 612] trucks and hauled to the nearest freezing or drying plant.

All of the eggs represented by the claims that will appear on our statement are standard grade eggs and have been carefully checked by our own employees and, in my instances, have been inspected by the Department of Agriculture inspector.

Exhibits have been filed which show the tolerances allowed on U. S. D. A. grades. However, the Army does not accept any eggs that have as much as 5% checks, which is permitted under U. S. Commercial Grade A as indicated by the Department of Agriculture on their circular effective December 1, 1947. Their maximum is 3% of checks with no broken eggs or leakers, and no dirties. We do not ship to our own branches any of this type of eggs, and try to the best of our ability to ship all sound eggs.

Prior to the war, our packing was subject to the same standards as we now maintain, and our claims were negligible; indeed, the entire United States yielded only an average of about $3. per car. Our claims were far below this average.

Swift & Company does ship quite a few eggs by truck from sub-stations to principal Dairy & Poultry plants. These are what we term buying stations, and at such buying stations we have a regular force that rehandles and repacks the eggs in accordance with general practice.

The eggs are then trucked to the central point for shipment by rail, and when they are received at this point, they [fol. 613] are inspected by our people. This check is on 20% of the eggs received from the outside point and, in any instances where these eggs show an average of checks higher than our normal procedure, they are rehandled and repacked at that point. If there has been any indication of rough handling with resulting damage, all of the eggs are rehandled and repacked. This probably accounts for our

very low percentage of claims on eggs that come within the scope of the Graded Egg Rule in the Classification.

It seems that this method or some other similar method of inspection being used by the railroads, the Department of Agriculture, the Army, and Swift, that it should be given consideration in applying tolerance rules; for instance, we do not believe that under our method of handling we should be required to forward such eggs under the 5% tolerance rule.

Special Agent Murphy of the Commission made an investigation concerning the egg claim question. Apparently, he made a rather general survey of the deliveries at New York and he found that the claims at New York amounted to above 67% of the total egg claims, while New York received only 28% of the eggs. This situation is supported in our own handling of shipments to New York.

It was also mentioned that the inspection of cases showing only one broken or cracked egg in a case would qualify a shipment for a claim. Our investigation, of course, does not [fol. 614] support any idea that the claims at New York depend upon the finding of one broken egg in a case because, generally speaking, our claims are higher at New York than at other points in the United States, even though they are not as high as the average at New York, and when claims are developed there are usually thousands of eggs damaged in a car.

It is well established that the RPIA damage report covers many things other than an admission of damage for which the carrier is responsible; in fact, in many instances their report is used as a means of denying the claim or seriously reducing it.

We naturally hold that our filing of a claim with an individual railroad puts the responsibility on that railroad to settle our claim in the proper manner, regardless of the claims of the RPIA. However, if facts are developed by the RPIA that would make a claim improper, we would not file it. We do not always agree with the RPIA, nor do we file claims where the damage is confined to checks in substantially the same percent as developed by the U. S. D. A. grading at origin. It must be understood, however, that we do not have U. S. D. A. grading at all points. We know that

the RPIA inspection is not equivalent to a draft against the carriers in connection with our shipment.

In connection with previous testimony offered, there is a very serious question as to the amount of damage at origin [fol. 615] as compared with that found at destination and, certainly, one cannot always look at the cars at destination or, in fact, any car at destination, and determine what portion of the damage occurred before the car was loaded unless eggs were inspected before being loaded, and this is not the general practice.

However, with the extremely high claims resulting, it would seem that the carriers would establish some sort of an investigation to determine the condition of the eggs generally being offered for a representative period; probably six months or a year.

The carriers could unquestionably do a lot of inspection of eggs at origin for $93.00 per car, and if their contention is correct that the shippers are responsible for a large percentage of the damage, it would appear to be money well spent to put on an inspection crew to determine the exact facts, rather than take the position that they would rather go out of the business of hauling eggs, which has resulted in substantial revenues to the carriers in spite of the high claim payments.

According to the Commission's Commodity Statistics Report for the year 1948, the carriers received about $450.00 per car for all of the eggs handled and paid out about $93.00 a car in claims. Certainly, traffic represented by anywhere from thirty to fifty thousand carloads is not to be tossed off lightly.

Much comment was made concerning the 5% tolerance [fol. 616] rule. It would seem to be the general opinion that the only dividing line that could be maintained in connection with the present 5% tolerance rule would be to confine its application to eggs that had been trucked over the road. Our investigation does not support this theory because of all of the claims filed on our 1948 shipments, only five of them represented graded eggs.

We ship eggs to every state in the union and our method of filing claims is exactly the same in New York as it is at all other points. We do not file claims where the car arrives

at destination and can be delivered under the grade represented at the time of shipment. For instance, our car is loaded with eggs which have had all checks etc. removed. If delivered in that condition, we would have no claim because we could make delivery subject to standard grade; but if the shipment is damaged in transit, the grade is immediately destroyed because it contains more checks or other damage than is permitted under the U. S. D. A. grading rules.

Certainly, in our operations we do not deliberately load broken eggs; in fact, all of the eggs we ship have been rehandled and repacked either at the origin of the rail shipment or at some point beyond and then trucked into the origin of the rail shipment. Our eggs are shipped for the consumer trade and are not packed with any of the many different kinds of eggs mentioned in the tolerance rules, and the only checks we have are those occurring during the [fol. 617] package. This may account for our small percentage of claims.

Our claims result principally from rough handling by the railroads; at least that is our opinion, because our claims generally indicate broken or damaged cases which can only come from rough handling. Our claims have gone up to such a great extent during the past seven or eight years that it could not be charged against any increase in the price of eggs or the cost of labor. In fact, in 1941, we seldom had a claim for damage to eggs.

The RPIA have some ideas concerning costs in which we cannot concur, and do not concur; for instance, they want to settle at New York on the basis of 40¢ per case for labor and material. We do not know in any particular instance whether this is too high or too low. We insist upon applying the actual cost, except in those cases where the claim results from a shipment consigned to a customer. Wherever the customer has agreed to such basis of settlement, we have no other method of determining the basis of claim and we, therefore, have a few claims that are based on the 40¢ figure. We are certain, however, that an actual figure is more certain than any estimate and removes entirely any claim of preferential treatment.

We do not concur in the opinion that the efforts of the

producers have been directed principally towards producing larger eggs. In fact, for the last two years there has been an over-size egg committee composed of processors' [fol. 618] groups, breeders' groups, hatchery men, U. S. Department of Agriculture, poultry science, producers' groups, The National Poultry Improvement Plan, and others, to develop a uniform size egg that will remove the large eggs, such as those that will not fit into the average filler and flat.

We are producing, generally speaking, eggs that do not present a hazard in the handling by the carriers. The standard grades of Brookfield eggs are, more or less, uniform and we take the extremely large and extremely small eggs into our breaking plants.

The improvements in the cases, fillers, and flats resulting from the extensive tests in the early '20's, with the general recognition by the carriers' representatives that eggs are breakable, brought about the ideal condition existing in 1941 when the egg damage claims amounted to about $3.00 per car. That, I mean, is per car shipped throughout the United States. Certainly, many of our claims do not indicate very careful handling on the part of the carriers.

We have made numerous test shipments during the war and since, in which we included a shock recorder; and regardless of the kind of cases used, we never had a serious shock to such a car. Likewise, we did not have a claim on these cars. The fact that the carriers do handle hundreds of thousands of cases of eggs for us without sufficient damage to result in a claim indicates that eggs can be handled by [fol. 619] railroad without damage.

If some shippers are offering eggs that are in a damaged condition and claiming for such damage from the carriers, it is perfectly obvious what the carriers must do to correct this situation. Certainly, the shipper of eggs should not be penalized either in rates or claims merely because someone is not handling shipments carefully or properly supervising their operations.

So far as we are concerned, we have in the past six or eight months developed an extensive truck movement of eggs, and if it continues to grow, the carriers will lose the

major portion of our egg business. This is not principally because of claims, but because of their high rates.

The Commission's Commodity Statistics for the first two quarters of 1949 indicate that we are not alone in the diversion of this traffic from the railroads, and while their 1948 traffic represented only about ⅔ of their 1947 egg traffic, the present reports would indicate that they are probably losing an equal amount in 1949.

By that I mean, Mr. Commissioner, that there were some 30,000 carloads in 1947, there were 21,000 in 1948, and according to the Commission's statistics for the first six months of 1949, I doubt that there will be 10,000 cars of eggs in 1949.

Commr. Mitchell: You mean handled on the rails?

The Witness: On the rails.

[fol. 620] Commr. Mitchell: Do you think that the rails can compete, as a matter of rate, with the trucks?

The Witness: The rails can compete with the trucks and the western railroads have approved a reduction in their rates to the eastern areas—that is, to CFA and truck line in New England territories—and the subject was considered.

Commr. Mitchell: How much of a reduction did they approve?

The Witness: The reduction runs about—oh, I think I would be safe in saying about 35¢ a hundred pounds.

Commr. Mitchell: Does that reduction put the rails under the trucks?

The Witness: No, it was supposed to merely equalize the truck freight, the cost. In other words, this was supposed to be sufficiently below the truck rate so that the refrigeration added to it would be sufficient to make it equal to the truck rate.

Commr. Mitchell: Is there any reason why the trucker cannot get below the rail rate?

The Witness: Only that he would get below his cost and not make a profit, and I do not believe he would stay in the business and not make a profit.

Commr. Mitchell: Of course, there is such a thing, Mr. Ford, as a change in the mode of transportation which cannot be met.

The Witness: Yes, but I do not think that applies to cars that earn $450 per trip.

[fol. 621] Commr. Mitchell: Well, if you pay back half of it in claims, of course, you have not got $450.

The Witness: If the railroads would handle twenty-one carloads of eggs in the manner they handled 50,000 in 1941 they would not have to pay back $93.

Commr. Mitchell: You realize, of course, that 67 per cent of the claims paid were here in New York City?

The Witness: Yes.

Commr. Mitchell: And that they paid back, in 1947, 50% of total revenue?

The Witness: I think that is correct.

Commr. Mitchell: You do think that can continue and the railroads can continue to make a profit on handling the eggs, do you?

The Witness: No, but I do not think they should be here in this proceeding asking the shippers to assume, merely by a wave of the hand, putting a rule in, cutting out the shippers' claim rights, and doing nothing, themselves, to improve the handling of eggs.

Commr. Mitchell: Does this 5 per cent tolerance affect Swift & Company in any way, in filing claims?

The Witness: We have filed such claims in 1949. We do ship from some three houses which are main points, and we have eighteen surrounding points, six of which move into those three central points; that is, six to each of them. And [fol. 622] from those three central points we do ship so-called graded eggs.

But 5 per cent is a very confusing figure, Mr. Commissioner, because 5 per cent, in a claim that we had recently, reduced it from $557 to $139.

Commr. Mitchell: Of course, the whole question is one of the ability of the railroads to meet competition. And you think they can do it?

The Witness: I am sure they can.

Commr. Mitchell: We have been working on this New York situation for going on three years and we have not gotten anywhere yet.

The Witness: Mr. Commissioner, I do not know that I

should be attempting to expert, and I am not attempting to expert on the question, but I have sat through a number——

Commr. Mitchell: Well, with your experience you should be able to give us something of an opinion in the light of an expert.

The Witness: I have thought, to some extent, that the information that they would obtain through the use of about a dozen shock recorders in the egg shipments, just continue to use those shock recorders, they would find out something that would shock them as to their method of handling eggs.

I say that because we are doing the same thing today on our meat shipments. We are having a good deal of trouble with meat being off the hooks.

[fol. 623] Commr. Mitchell: You are shipping a lot of meat by trucks, too, aren't you—or perhaps we should not go into the meat situation.

The Witness: We ship a good deal by trucks, yes.

Commr. Mitchell: That is very interesting.

I am sorry to have interrupted you. Go ahead, Mr. Ford.

A. (Continuing:) On page 140 of the record of the Chicago hearing, it was stated that these eggs that are identified in the classification as graded eggs should be described as current receipts, if one was technical. The term graded eggs used in the classification does not apply to current receipts because current receipts are those eggs that come direct from the farmer without any attempt to put them in condition for marketing. The eggs known as graded eggs have been rehandled and repacked at some point beyond the origin of the rail shipment, and are standard grade eggs. Certainly we did not want rehandled and repacked eggs described as current receipts merely because the railroads felt it necessary to establish a tolerance rule on rehandled and repacked eggs which had a truck movement before being shipped by rail.

We are in a little different position, apparently, than most of the egg claimants through the country in that most of our eggs are consigned to our own company at our various branch houses; and where the indication is in the record that the consignee files the claims and the shipper is taking [fol. 624] advantage of the situation, we do not know about

this, but we know that any claim we file is intended to be bona fide and it is our purpose to collect all of the claims for which the carrier is responsible.

Some comment was made about shippers employing itinerant labor. So far as we are concerned, our eggs are loaded under the supervision of an experienced checker, most of whom have been in our employ for many years, and whether our laborers may have been with us 25 years or 25 days, most of them have been with us for a long time—but the mere fact that a laborer has not been loading eggs for a very long time does not mean that he has any control over the method of loading. This is always under the direction of our regular operation men, who are fully qualified to load cars.

The laborer is merely there to do what he is told to do, and in the manner he is told to do it. This might be one reason that our claims are lower than the average, but again it would indicate the necessity for some supervision by the carriers.

The previous comments about the producers trying to develop larger eggs is not entirely correct, because there has been a program for several years towards developing uniform quality, size and quantity, rather than oversize eggs that will not fit into the cases, and where eggs are generally larger we have used a generally larger case.

The Interstate Commerce Commission investigated the [fol. 625] general question of egg claims in 1919, and in their decision in Docket 10012, they comment that the evidence indicates that the main damage to eggs received in transportation is due to shocks which the car receives in coupling, switching, from the application of air brakes, or in wrecks, and that in many instances, while these shocks are not of a kind to produce any noticeable exterior damage to the case, they are sufficient to break a portion of the eggs, even when carefully packed.

Further, in this decision it is indicated that the testimony showed that as to experiments with cases containing cracked eggs which were subjected to shocks similar to those received in railroad transportation, that the cracked eggs resist shocks almost as well as sound eggs. Therefore, there is every reason to believe that if any checked eggs

happen to get into our cases, that they would be better able to resist shock than cracked eggs.

It must not be overlooked that, in generally speaking, eggs that are packed to meet a standard grade may always be delivered on that grade if there is no more than 3% of checks; yet, there may be many other conditions affecting the quality of the grade.

We are ufilizing today two different size cases, but the case we use most of the time has an inside depth of 12¾" and this is to take care of the large eggs. The other case has an inside depth of 12½".

The larger case is used principally to take care of the [fol.626] standard grades which run a little larger, and we have found that it works out satisfactorily. The reason we do not use so many of the 12½" depth cases is that we normally do not ship smaller eggs, but dispose of them through various channels, such as freezing, drying, local consumption, etc.

It is quite obvious that current receipts should have a higher percentage of damage than any eggs that have been rehandled and repacked, even though the latter may have been trucked from a packing plant to the rail head. This is because all of the bad eggs have been removed from the rehandled and repacked, received from the packing plant and any checks or broken eggs that occur would only be there because of accidents that happened to them after they had been packed.

The instructions to our workers in our Dairy & Poultry plants require them to remove all checks, cracks, leakers, or broken eggs; and they do this through the candling operation.

In candling there is no doubt that you have a better opportunity to determine checks than in any checking operation such as is performed on the unloading docks, for instance, at New York, under the supervision of the RPIA, because they do not candle eggs to determine the checks.

If the checks are of a nature that they cannot be determined by looking at the layer of eggs, that layer is merely picked up and set into the case as a good layer of eggs. They never knowingly put even a checked egg into a case, [fol. 627] and this apparently is the general method of

packing eggs, although supervision you must admit is an important factor.

Commr. Mitchell: At this time we will take a short recess.

(Whereupon, a short recess was taken at this point.)

Commr. Mitchell: Come to order, gentlemen, please. We will proceed.

A. (Continuing:) These three pages, numbered 1 to 3, represent the years 1941 to 1948, inclusive, showing the tons of freight originated and gross revenue as taken from the Commission's Commodity Statistics; also, total loss and damage claims, as taken from the Association of American Railroads' Annual Reports.

I have not attempted to show all of the columns appearing on the AAR reports; however, I have taken those representing unlocated damage, improper handling in trains, yards or stations, defective or unfit equipment, train accidents, and error of employees. To the extent possible, I have utilized the same commodities as in other pages and I have used the last four columns particularly because they seemed to represent damage conditions solely due to the acts of the carriers, or failures in their operations.

Of all commodities, it appears that unlocated damage has come up to 543% of the 1941 figure; improper handling in trains, yards or stations, is 463%; defective or unfit equipment, 635%; train accidents, 392%; and error of employees, 390%.

Let us look at eggs, for instance. The total unlocated [fol. 628] damage is 1926% of the 1941 figure. The improper handling in trains, yards or stations in 1948 was 1136% of the 1941 figure, and it must not be overlooked that in 1948 the carriers originated over 60,000 tons less of eggs than they did in 1941.

The other causes do not seem to be as much out of line.

However, it might be noted that under the heading of defective equipment in the year 1946, when they were handling 618,000 tons of eggs, $18,000 was charged to defective equipment, as against $2,000 on 391,000 tons of eggs in 1941.

In 1945, when they were handling 700,000 tons of eggs,

they had $45,000 charged to train accidents, as compared with $5,000 in 1941.

In 1944, they charged $11,000 to error of employees, as compared to $361 in 1941 and $6,000 in 1947.

The improvement is greater in 1948 because in that year only $1,100 was charged to that reason.

On livestock we find charges under these four columns going up much higher than either the revenue or the cars shipped; in fact, in 1941 and 1948 the number of tons of livestock originated was substantially the same.

But take, for instance, the year 1947, under the heading of improper handling. Claims for this reason were over four times greater than in 1941.

In 1948, defective equipment was over three times as much as 1941 in the claim causes, but in 1948, with sub-
[fol. 629] stantially the same number of cars, we find the train accidents accounted for $235,000, as compared with $38,000 in 1941.

As to error of employees, 1945 apparently was a bad year because it was three times as great as 1941, but 1947 almost doubled that figure.

Striking comparisons of this nature appear throughout these pages; for instance, the defective and unfit equipment witnessed a rise from 1941 to 1948 of 2540% on fresh meats and packing house products, which was over three times the rise in the total loss and damage claims.

Defective equipment went to 795%, in 1948, as compared with 1941 on fresh fruits, while other reasons range from 107% for train accidents, to 247% for error of employees.

As for melons, defective equipment and errors of employees seem to be the principal cause for claim.

While 1948 seemed to be the worst year for defective equipment and train accidents, 1947 seemed to be the worst year for errors of employees.

On fresh vegetables, defective equipment seemed to show the greatest increase over 1941, with train accidents running actually a higher gross amount of money, but the per cent of increases due to defective equipment was materially higher than the increase in the total loss and damage claims.

As for sugar, the number of cars remained about the same, the unlocated damage went up to 697%, but improper

[fol. 630] handling in trains, yards or stations went up to 1583%.

Wood products not otherwise specified reflect a little different pattern, but unlocated damage is up to 1300% as compared with the total of 1250%, while defective equipment is only responsible for 1317%, 1948 over 1941, improper handling is 712%, train accidents 832%, and errors of employees 2850%.

Referring to glass and glass articles, we find the total to be 836% of 1941.

The unlocated damage is 983%, but improper handling in trains, yards or stations represents 625%, while error of employees makes the 1948 figure 1682% of the 1941 figure.

On liquors and beverages, we find three of the four columns shown as being over 1000%, and in excess of the total loss and damage.

On sewer pipe and drain tile, we find the total loss and damage in 1948 to be 302% of 1941, with the unlocated damage as 293%, improper handling in trains, yards or stations is 559%, and defective equipment is 4056%, with train accidents raising the figure to 406%.

Apparently, the employees were more careful in 1948 because error of employees is only 3.2% of the 1941 figure.

Furniture shows, under train accidents, 1629%, compared with 339% under unlocated damage.

Dry goods under train accidents are 2687% of 1941, while errors of employees are 1472%, with improper handling and [fol. 631] defective equipment ranging over 500% and 600% respectively.

These compare with total claims of 371% and unlocated damage of 293%.

These pages show rather startling figures concerning the claim factors for which the carriers could not claim anyone else responsible. I do not know how they arrive at these figures, but they are their own admission concerning their handling of these various commodities.

There is no way for us to tell whether any of the damages to eggs appearing under the heading of unlocated damage should actually be charged to one of these four columns.

Apparently, the carriers did not find any way to place the unlocated damage under a specific cause and, therefore,

it may include almost anything; but throughout these pages, the figures have varied so much that almost any act or condition properly reported could increase some of these columns, particularly improper handling, defective equipment, and error of employees.

Probably the most important thing to consider here is that the carriers admit improper handling in trains, yards or stations as being responsible for extreme increases in the amount charged to that cause, and those increases have been consistent from 1941 to 1947, and were only reduced $14,000 in 1948, but still leaving the 1948 figure 1136% of the 1941 figures.

These two pages, numbered 4 and 5, represent figures [fol. 632] taken from the Commodity Statistics of the Commission, and the claim figures from the Association of American Railroads' Annual Reports for 1941 and 1948.

In 1941, the average claim paid by the railroads on 34,000 carloads of eggs shipped was $3.37, and the average claim was 1.74% of the average per car revenue. The number of carloads of eggs shipped rose materially during the war years, but by 1948 the total shipped was a little over 21,000 cars, a reduction of about ⅓.

Revenue on this number of cars, representing about ⅔ of the 1941 figure, was over $9,000,000, or approximately ⅓ higher than the 1941 revenue on the higher number of cars. Actually, the revenue per car in 1948 was over twice as much as the revenue per car in 1941; however, the claims went up to $2,000,000, and represent an average claim per car shipped of $93.12, as compared with $3.37 in 1941.

The relationship of the claims to revenue was that in 1941 the carriers paid out 1.74% of their revenue in claims, but in 1948 paid out 21.7%.

Regardless of how we compare these figures, it shows that the claim situation on eggs is serious and one that should be given the fullest consideration in an attempt to reduce the claims.

The most objectionable thing to the shipper of a carload of eggs is to have a claim at destination, because when Swift [fol. 633] & Company, for instance, starts out a car that has met all of the requirements for rehandled and repacked eggs and met the grading of the trade or the U. S. Depart-

ment of Agriculture, they want that kind of a car for delivery to their branch house or customer at destination. When it reaches destination in a damaged condition, it causes trouble for everybody and is particularly objectionable to us in our trade relations with our customers.

For information of all parties, we have also shown the condition as to other general commodity groups, covered in the Association of American Railroads' reports, showing opposite each commodity the statistic groups from the ICC report.

The second commodity shown on this statement is livestock. There the number of carloads was substantially the same in 1948 as in 1941.

Revenue increased from $55,000,000 to $85,000,000, and revenue per car increased relatively.

The claims increased from $1,000,000 to almost $4,000,000 and represented average claims of $1.77 and $6.41 for the two years. The average claims increased from 1.97% of the average revenue to 4.60%.

Here is a commodity that requires the utmost care. Live animals must be handled with care in loading and unloading. They must be switched with care to keep the animals from falling and breaking a leg or otherwise injuring themselves. [fol. 634] They must be stopped in transit quite often for feed, water and rest, which requires unloading and reloading. In fact, there is practically every known hazard in the handling of livestock as related to other commodities.

Yet the carriers, by their careful handling, have had a relatively small increase in the claims, as indicated by the raise from $1.77 to $6.41, and probably much of this is in the price of the livestock.

We are large shippers of livestock from Chicago and the west to our packing houses located in Baltimore, Maryland, Harrisburg, Pennsylvania, Jersey City, New Jersey, Newark, New Jersey, New York, N. Y., East Cambridge and Springfield, Massachusetts, and, of course, our shipments are in these figures.

The claims on fresh meats and packing-house products have gone up from 66¢ per car shipped to $4.22 per car shipped, on substantially the same number of carloads

handled. Probably the greatest damages we have had to meats are in connection with hanging carcass meats, which we feel reasonably certain occurs from rough handling in transit.

Fresh fruits have developed an average claim of $22.87 per car shipped, as compared with 1941 figure of $5.92, and while the number of carloads of melons have increased considerably, the claims per car shipped have risen from $17.34 to $56.76 per car, and the average claim was 5.68% of the revenue in 1941, but has risen to 14.92% in 1948.

[fol. 635] Throughout this exhibit we find many commodities that have not suffered such extreme increases in damage; for instance, fresh vegetables, sugar, machinery, dry goods, canned goods, liquors and beverages, and, above all, glass and glass articles.

But consider for a moment sewer pipe and drain tile. The number of carloads have not changed materially, but the revenue is up almost double and the average claim is up from $10.70 to $34.46, representing a rise of from 10.38% to 19.58% of the average revenue.

It is my experience, after many years of employment by railroads and Swift & Company, that drain tile has always been a serious source of claims, but in 1941 when the railroads were paying out over 10% of their revenue in claims on this Commodity, they were paying out 1.74% of their revenue on eggs.

So, while the percent of the average claim of the average revenue has gone up only about 100%, it still represents about the same per cent that egg claims are of the average revenue on that commodity in 1948.

A rather unusual situation exists in connection with the glass and glass articles if we compare them with eggs. On glass and glass articles, the claims amounted to 0.43% of the revenue in 1941, and have only gone up in 1948 to 1.38%.

It is my observation that glass is a fairly fragile commodity, and all of the glass that we receive for use in our packing houses reaches us in corrugated fiber boxes.

[fol. 636] The purpose of these pages is merely to bring to the attention of all parties the strange condition existing in connection with the handling of eggs.

We have an extraordinary claim record which is not duplicated in any other commodity, yet amongst these other commodities are such as glass and glass articles, livestock, furniture and fresh meats and packing house products.

Page 6 is a statement showing the wholesale average for 1941 and 1948, with the per cent of increase; also, the cost of living consumer prices for the same period.

These calculations taken from the United States Bureau of Labor Statistics indicate an increase in the cost of food products, 1948 over 1941, of 98.3%, that is under the cost of living consumer prices heading. Foods under the wholesale prices index indicate 1948 to be about 116% of 1941.

Farm products, under the wholesale prices, indicate an increase of 128½, 1948 over 1941, and these are the principal indexes that we would be interested in in connection with the previous pages of the exhibit.

Eggs are shown individually in the Government Statistics. I have been able to develop certain figures in this connection. The are as follows:

Egg Prices—Spot—N. Y. C.—Wholesale Grade—
Mixed Colors

Extra Fancy Heavy Weights 80% A, 48(#)*
Monthly average of top quotations

[fol. 637]

1941 Average	31.35
1942 Average	39.4
1943 Average	Not Available
1944 Average	Not Available
1945 Average	Not Available
1946 Average	Not Available
1947 Average	54.7
1948 Average	56.6
1949 Average	54.8 (11 mos.)

* 1941 and 1942 quotations are for the best qualities of mixed color eggs at New York City, assumed to be comparable to Extra Fancy Heavy Weights.
Source: "Producers Price Current"—Urner-Barry Publishing Company.

Page 7 is a statement showing straight carloads of eggs forwarded by Swift & Company during the year, freight charges paid, and the claims filed on those same cars and others.

In making up this statement, it was possible for us to determine the number of straight carloads of eggs, but it was not possible for us to determine the exact number of cases of eggs involved, nor was it possible for us to develop information as to the exact number of cases shipped in mixed cars with other dairy products.

We do know, however, that we shipped over two million cases of eggs by rail, and the claims that have been filed [fol. 638] represent all of the claims we filed on all eggs shipped by rail, whether they were in straight carloads or in mixed carloads with other products.

The number of cars shipped and freight charges paid, as indicated on this exhibit, are only those applying to straight carloads.

There were 1,970 straight carloads of eggs, and on these straight carloads of eggs, we paid freight of $897,000. Total number of claims filed were 296 and the total amount of such claims were $71,778, with an average claim of $207.23.

In this latter figure we have not included one car that was shipped which was totally destroyed because of a wreck. That was a shipment in November of 1948 to other than New York City.

Likewise, under the average claim per car shipped, we find a figure of $31.13, and again it must be impressed upon all concerned that this $31.13 average represents the total number of claims, but only the straight carloads of eggs, so it is an inflated figure because it covers all eggs shipped from the standpoint of arriving at claims, but not more than one-half of the cars shipped upon which the revenue on this statement is figured.

The total number of claims filed on all eggs divided into the straight carloads of eggs indicates that 15% of the cars developed claims; but this, of course, is an inflated figure.

Regardless of this, the total claims on all eggs shipped [fol. 639] by Swift & Company during 1948 only represented 7% of the revenue paid on the 1,970 straight car-

loads, and again it must be remembered that one claim was not included because that was a totally destroyed car that was in a wreck.

On the basis of these calculations, and having in mind all of the qualifications that went before, we find that to points other than New York and vicinity, our claims averaged $186, but to New York they averaged $305.

Our claims to New York represented only about one-sixth of our total number of claims filed against the railroads, but the total money represented about 20%.

The average claim to other than New York was $26.98; to New York it was $56.80.

The per cent of cars developing claims was 14.4% to other than New York, and 18.6% to New York.

The per cent of claims to freight paid was 5.9% to other than New York, and 11.9% to New York.

Stated otherwise, New York claims amounted to 11.9% of the freight revenue, and claims to other points represented but 5.9% of the revenue.

Page 8 is a statement showing the straight carload shipments of shell eggs to eastern destinations; that is, the territory east of Buffalo and Pittsburgh in Eastern Trunk Line and New England Freight Association Territories, during the year 1948. This also shows the number and amount of the claims via each routing.

[fol. 640] The page is self-explanatory. However, I believe that it would be well for the carriers to give particular attention to the claims developed in connection with those shipments that moved via the New York Central Railroad, the Pennsylvania Railroad, the Long Island Railroad, and the Delaware-Lackawanna and Western Railroad.

Page 9 shows a statement of claim possibilities under a 5% tolerance rule such as is now in effect on graded eggs, or those eggs that have been rehandled and repacked at a Swift & Company buying station, then trucked to a nearby main plant and loaded into a railroad car.

Using 600 cases of eggs as a load, consisting of 18,000 dozen eggs, with 5% tolerance (or 900 dozen) and 5% totally destroyed (another 900 dozen), we would reach

destination with 16,200 dozen perfect eggs and 900 dozen checked eggs.

Assuming that the 900 dozen represented by the tolerance were checked eggs (and this appears to be Mr. Jensen's theory when he considers that all of these claims arise from shelf damage), on this basis we arrive at destination with 17,100 dozen eggs that may be used, and 900 dozen have been destroyed.

Assuming that this car as shipped was valued at 50¢ per dozen, we would have a total value of $9,000. In rehandling the car at destination, we would develop 900 dozen checked eggs which we would sell at 40c, and thereby recover $360. We would have no value in the 900 dozen [fol. 641] destroyed eggs; therefore, our 16,200 dozen of perfect eggs at 50¢ would be worth $8,100, and our 900 dozen at 40¢ would be worth $360. This would make a total value of the eggs for delivery of $8,460. Subtracting this figure from the original value of $9,000, we have a total damage of $540.

Now, let us see what the carriers would do with a claim of this nature if it were presented to them, and for the purpose of this claim nothing has been included for the labor and materials in rehandling the car.

The method that RPIA wants to use and tries to use, in the settlement of such claim is that, as there was a 5% tolerance and there was 10% of damage in the car, the claim should be settled on an equal division of this 10%; in other words, 5% tolerence and 5% claim.

Thus, it is their idea that they would cut this figure in half and offer the consignee $270 in settlement of the claim, to which, of course, we recognize would be added 50% of the labor and materials used.

Now let us see exactly what the carriers did. They took a carload of good eggs from the origin point, and they totally destroyed 900 dozen, which, valued at 50¢, would be $450. This alone would require the payment of more money than they are willing to assume; in other words, $180 more than they would be willing to assume.

[fol. 642] Now let us assume, further, that this car started out from origin in perfect condition and arrived at destination with 900 dozen eggs, totally destroyed or broken,

leakers, or in some such condition that the city authorities at New York would not permit salvage. Let us further assume that these eggs were divided eighteen to each case.

Under these conditions, the carrier would have destroyed 900 dozen eggs, and under the tolerance rule they would not pay anything, regardless of how much rough handling in transit was indicated.

This is a rather vicious rule as applied by RPIA when we consider that qut of all of the claims we filed in 1948 covering 1948 shipments, only five claims involved eggs that came within the tariff description of graded eggs.

There are many variations of this; in fact, so many variations that it is difficult to keep up with the RIPA's ideas. We are continually receiving letters from the carriers in which, I am quite sure, the carriers have had to resort to higher mathematics for their calculations.

Page 10 is a copy of the Army specifications for procurement of eggs which became effective November 21, 1947, and are still in effect.

With U. S. D. A. grading at some points, and with Army grading at many of our points, and with our own grading which is even stricter than either the U. S. D. A. or the Army, we may and should have a better record than the [fol. 643] average; but, even with this record, we cannot prevent the carriers damaging eggs by rough handling, or, as they stated in their own report, improper handling in trains, yards, or stations, defective or unfit equipment, train accidents, and errors of employees. Likewise, we cannot be responsible for unlocated damage, because we pack and offer for shipment eggs that are in good condition.

No tolerance should be required of us on such shipments, and so far as any proposal to increase the rates to cover these claims is concerned, it must be recognized that the carriers are today handling considerably less eggs than they handled in 1941, the record for 1948 showing that they handled 328,000 tons, and in 1941 they handled 391,000 tons, and the revenue is up 50%.

If they could handle more eggs in 1941, with $115,000 total loss and damage, how can they explain handling less eggs with 17 times as much loss and damage, upon which they received 50% more revenue; and how can they justify

any such figure on eggs in comparison with their record on livestock?

[fol. 644] By Mr. Staley:

Q. Mr. Ford, will you refer back to page 7 of your Exhibit No. 37. I call your attention to the figures there. Do those figures refer to actual freight charges of carloads shipped?

A. They do.

Q. How many actual carloads were shipped by Swift & Company by rail; that is, carloads of eggs?

A. 280,000 cases.

Q. Are you able to state with fair accuracy the number of straight carload shipments which all of those cases would amount to if they had been shipped in straight carloads?

A. If they were shipped in straight carloads of 500, it would be about 4,000 straight carloads.

Q. Are you able to state with fair accuracy how many actual shipments were made; that is, taking into consideration those that were shipped in mixed carloads?

A. Yes, there would be not less than 5,000 additional cars that contained eggs, probably more.

Q. So that if you added to this 1,970 straight carloads another 5,000, you would have 6,970 shipments; is that right?

A. Containing eggs?

Q. Containing eggs.

A. Yes.

Q. Now, am I correct in stating that against those approximately 7,000 shipments in all, only 296 claims were filed?

[fol. 645] A. That is correct.

Q. So that with those two figures you can calculate the number of egg shipments by Swift & Company by rail which went through to destination without any claim being filed?

A. That is correct.

Q. That would be considerably less than 10 per cent of the shipments on which claims were filed?

A. Yes, that would materially reduce all of the figures under the heading "Average Claim per Car Shipped."

"Percent of Cars developing Claims," and "Percent of Claims to Freight Shipped," because the percentage would be increased because of the number of cars on which revenue would have to be added and the number of cars shipped.

Q. Can you tell, Mr. Ford, by looking at a case of eggs in which there are eggs that have been damaged somewhere, whether they have been damaged in shipping or in packing?

A. You might be able to do it and you might not.

Q. Well, for example, if you found a broken egg in the middle of the case, what would that indicate?

A. If you found a broken egg in the middle of the case, you might never be able to tell, without opening, whether it was there.

Q. If you found broken eggs in a row alongside of the cases toward one end of the car, and in several cases, what would that indicate?

[fol. 646] A. That would indicate rough handling.

Q. If you found some of the eggs broken and the meat appeared to be in a very fresh condition, what would that indicate?

A. Very recent damage.

Q. As a practical matter, in handling our egg claims, do we have any difficulty in determining whether that damage has resulted from handling the car to destination?

A. Not in our estimation.

Q. You have heard Mr. Pidoriano describe the manner of unloading and checking the eggs and determining whether they were in good condition or damaged, did you not?

A. That is right.

Q. When Swift & Company has a damage claim, has the handling been substantially the same by the Swift & Company representative and the RPIA representative as described by Mr. Pidoriano?

A. Yes.

Q. Do you make an investigation of any kind in New York to see if you could determine why Swift & Company has more claims here than in the rest of the company?

A. I have been here two days trying to find out what I could, and there is nothing to indicate that there is any handling here that is increasing the claims.

Q. By that you mean the handling of the shipment that increases the amount?

A. The handling of the shipment, or the men, or let us say [fol. 647] carelessness of the men handling the eggs on the dock. It seems to me that they handle the eggs about the same way as we do at our own branches.

Q. They go about separating the eggs and determining the damage in the same manner?

A. Yes.

Q. The fact that there are more eggs damaged and broken indicates that there are more eggs that come in here in that condition due to handling?

A. In fact, I would suggest that there is no candling. New York, and I guess every other place, does not provide any kind of a candling operation. It is a visual inspection, and it is a visual inspection of a whole layer of eggs, whereas we candle at our plant. You might have many checked eggs that would be picked up on one flat; that is, a full section of a case. There might be many checked eggs in there that would not appear on a claim report because it was not visible to the naked eye.

Q. Well, the eggs that are left do not have a greater number of broken eggs that are checked than is permitted under the USDA requirements, or are you still able to sell those eggs at the same price?

A. If they do not exceed the USDA number of checks.

Q. So that with respect to more than 90 per cent of your egg shipments, the shipments get through and the eggs are sold on grade, with a price of that grade; is that right?

[fol. 648] A. That is right.

Q. But where damages result in transportation and you separate all these eggs you might take some checks out of the case? Does that, nevertheless, result in damage to Swift & Company?

A. That results in this damage: If you are shipping a car that is subject to USDA grading and because of damage of the shipment in transit you have a higher percentage of checks than is permitted under the grading, your grade goes down and you lose in many ways.

You lose, first, because you must repack and rehandle. Then you cannot deliver that car which was shipped at an

A grade, for instance, because you do not have a carload of Grade A eggs. Instead of 600 cases you have 550 perhaps.

Q. Do shocks to the eggs result in loss of grade and quality in some other manner than by breaking of shells?

A. Oh, yes. The quality of the egg can be damaged just the same as the shell.

Q. That is, the air cell will be broken?

A. The air cell will be broken or the yolk may be loose from the white, and the grade would go down on a candling.

Q. Has any damage claim ever been filed in a case of that kind?

A. Not to my knowledge. But of course that kind of condition is present in every seriously damaged car.

Q. You mention the complicated method used by RPIA. Do you have some example of that to which you can refer, to [fol. 649] give us an idea of what you were talking about in the mathematics you mentioned?

Commr. Mitchell: Is that very material to what we have here?

Mr. Staley: Yes, sir, I believe it is.

Commr. Mitchell: All right; go ahead. We are giving a lot of time to this material.

Perhaps the witness can sort it out and we will take him afterwards, if you desire.

Mr. Staley: All right.

Commr. Mitchell: Do you want to cross-examine the witness?

Mr. Knowlton: We would much prefer to cross-examine him at a later date.

Commr. Mitchell: Would he be available at a later meeting, Mr. Staley?

Mr. Staley: Down at Washington he may be available, but I do not know whether he would be available at Los Angeles.

Commr. Mitchell: We are not going to make him or you or anybody else go to Los Angeles, Mr. Staley.

By Mr. Staley:

Q. To save time, Mr. Ford, have you found that letter?

A. Yes, sir.

Q. Will you merely read a few lines from that letter to show the complicated manner used?

A. "Since there were no marks to permit identification at [fol. 650] destination of cases qualifying and not qualifying, the RPIA has applied the five percent rule on a proportionate basis as follows:

"Computation of responsibility;

"Number of cases rehandled and repacked, 300;

"Number of cases not rehandled and repacked, 180;

"Percentage of shipments not qualifying as rehandled and repacked, 180 over 480, or 37½ per cent;

"Number of damaged cases in shipment, 87;

"Proportional number of cases damaged in category of not rehandled and repacked, 37½ per cent of 87, or 32.6 cases;

"Breakage tolerance of 5 per cent to be applied, 1½ dozen per damaged case, or 32.6 cases times 1½ dozen, or 49 dozen;

"Proportional number of dozens damaged in cases, not rehandled and repacked, 37½ percent of 602 dozen, total damage 225¾ dozen;

"Allowable percentage, 225¾, minus 49 over 225¾ tolerance, minus 78.29 percent;

"Proportional amount of claim to be allocated to that portion of shipment not rehandled and repacked, 37½ percent of $143.65, $53.87;

"Allowable percentage of this proportion 78.39 percent of $53.87, $42.17, to which should be added 62½ percent of claim allocated to that portion of the shipment rehandled [fol. 651] and repacked, or 62½ percent of $143.65, or $89.78.

"Total recommended, $131.95."

Q. How much did that cut the claim down, Mr. Ford?

A. Our claim was filed for $143.65.

Commr. Mitchell: And they allowed you $131.95?

The Witness: Yes, sir.

Mr. Staley: May I file that as an exhibit?

Commr. Mitchell: Yes, sir.

You may step aside, Mr. Ford, and be cross-examined at a later hearing.

Mr. Staley: I will offer the exhibit at the cross-examination.

Commr. Mitchell: You have it prepared, Mr. Staley.

By Mr. Staley:

Q. Will you identify Exhibit No. 37, Mr. Ford, and tell us what that represents?

A. Exhibit No. 37 is headed Statement Comparing as to Carloads Only Tonnage and Revenue Figures for Period 1941 to 1948, and others.

Commr. Mitchell: You have not offered those two exhibits, have you, Mr. Staley?

Mr. Staley: No, sir, I have not. I will offer those two exhibits.

Commr. Mitchell: Is there any objection?

(No response.)

Commr. Mitchell: If there is no objection they will be [fol. 652] accepted. (Swift & Company Exhibits Nos. 36 and 37, Witness Ford, received in evidence.)

Commr. Mitchell: That is all, thank you, Mr. Ford.

(Witness excused.)

Mr. Blanchard: Mr. Commissioner, I offer Armour & Company Exhibit No. 38.

The Exhibit, as it shows on its face, is merely a "Study of all carload shipments of eggs made by Armour & Company, at its branch houses in States of New York, Pennsylvania, New Jersey, Delaware, Maryland (including District of Columbia), and in New England States during period 1/1/48 to 10/1/49."

(Armour & Company Exhibit No. 38 was marked for identification, Witness Ford.)

Mr. Blanchard: Pages 1 and 2 were complete up to last night. This morning's mail brought straggling reports from four other points, including forty cars. So page 3 sets forth the reports received this morning, to which is added the totals shown on pages 1 and 2, giving the new per car averages and the new percentages in three of the four cases.

Suffice it to say the study was at my direction split into four parts. We took first all metropolitan areas in the East-
[fol. 653] ern District, except New York; namely, Boston, Philadelphia, Pittsburgh, Washington and Baltimore.

Next, we took the metropolitan area in New York as a destination territory and divided that into two parts: one part was cars receiving floated service before delivery, the other was cars not receiving floated service before delivery.

The fourth group are the small towns, such as Providence; Johnstown, Pennsylvania; Albany—small towns, not included in the metropolitan areas above described.

The answer to the exhibit, which we think is striking, appears on page 4, when we find that on floated cars in New York, 54.3 per cent of all cars received during 1949 were damaged, and the average damage on those cars was $323.47; on the cars not floated there were but three cars damaged, or 33⅓ per cent, and the damage was $69.

In all the other metropolitan areas, while the percentage of cars received damaged was 42.8 per cent, the damage per damaged car was but $78.78.

We think it bears out what we have thought for a long time, that the principal trouble with the New York claims situation is some of the service these car floats are getting.

Mr. Knowlton: I object to the picture Mr. Blanchard is drawing here, because it is not borne out by the exhibit.

Mr. Blanchard: Strike that out.

Commr. Mitchell: That exhibit will be admitted.

[fol. 654] (Armour & Company Exhibit No. 38 was received in evidence.)

Commr. Mitchell: Mr. Krebill, do you have a witness?

Mr. Krebill: Yes, sir.

VINCIL C. BISHOP was sworn and testified as follows:

Direct examination

By Mr. Krebill:

Q. Major Bishop, will you state your full name for the record, please?

A. Vincil C. Bishop, Major, Army Veterinary Corps.

Q. Did you state your assignment?

A. I am attending veterinarian to the New York Quartermaster Market Center and to the New York Branch, Quartermaster Inspection Division.

Q. And in connection with that, what are your duties? Just state them very briefly.

A. Well, my duties in those two capacities are to act as liaison to the New York Quartermaster Market Center, which is the purchasing agent, and Army Veterinary Corps inspectors performing inspections on purchases by the agency in the field, and also in the capacity as a technical adviser to the purchasing agency.

Q. At the Chicago hearing, Major Snider testified concerning the specifications for Quartermaster Market Center Grade 1 eggs and, in doing so, he stated that this required 80 per cent A, which permits up to 15 per cent B, [fol. 655] and a tolerance of 5 per cent which could be stains, checks, leakers, broken eggs, and loss, but not more than one-half of one per cent for loss.

Could you explain a little more fully what is included in this five per cent tolerance?

A. The five per cent tolerance includes C eggs, checks, and stains. Technically, under these specifications on which the Army purchases eggs, no leaker loss is allowed at origin. It is customary, if the amount of leaker loss is nominal, a price adjustment may be made. But no leaker loss is allowed after the price is allowed on the purchases.

Q. You referred to nominal leaker loss. Can you be a little more specific as to what that would be?

A. I would say 3/10 to 5/10 of one per cent.

Q. What is the percentage of checks which is allowed?

A. On eggs being purchased for export there is a stipulation that not over 3 per cent checks will be allowed at origin, or 4½ per cent allowed at destination.

Mr. Krebill: I think that is all I have.

Commr. Mitchell: Cross examination.

Mr. Staley: I have one or two questions.

By Mr. Staley:

Q. These percentages that you have mentioned, did all of them come out of the five per cent; that is, you have ½

of one per cent of leakers, and that comes out of the five per cent?

[fol. 656] A. Yes, sir. If a price adjustment is made, say, for three-tenths of one per cent leakers, that must be included in the five per cent. In other words, we can never go below 95 per cent A's and B's, 80 per cent of which must be A's.

Q. Assuming that you have 3 per cent checks, what would the other 1½ per cent consist of?

A. C eggs and stains, and any leaker loss which might be there, which is covered by the appropriate price adjustment.

Mr. Staley: Thank you.

Commr. Mitchell: Cross-examination.

Cross-examination.

By Mr. Knowlton:

Q. This is hardly cross-examination. How many leakers in your case would make your five-tenths of one per cent that would be allowed?

A. You would have one leaker in two cases.

Mr. Knowlton: That is all.

Commr. Mitchell: That is all, Major Bishop; thank you.

(Witness excused.)

Commr. Mitchell: There was another witness for Wilson & Company, wasn't there?

Mr. Staley: Mr. Kenney.

JAMES KENNEY was sworn and testified as follows:

Direct examination.

The Witness: My name is James Kenney. I am employed [fol. 657] by Wilson & Company, 4100 South Ashland Avenue, Chicago, Illinois. I have charge of the egg division and have had charge of it for about thirty years.

I have been in the egg business for forty-three years,

and our procedure of procurement and handling the eggs, packing them, candling them, and so forth, is similar to what was testified to by Mr. Ford and Mr. Dell.

Do you want me to go into detail?

Commr. Mitchell: Not unless somebody else does.

(No response.)

Commr. Mitchell: I do not think it is necessary. You say it is the same procedure?

The Witness: It is the same procedure.

Commr. Mitchell: You say it is the same procedure that Swift and Company follows, as testified to by Mr. Ford, and Fairmont Foods Company follows, as testified by Mr. Dell? Is that the statement you make?

The Witness: Yes, sir.

By Mr. Staley:

Q. Mr. Kenney, in settling your egg claims, that is, in determining the amount of damage, did you hear Mr. Pidoriano testify regarding claim settlement?

A. Yes, sir.

Q. Is the procedure followed in your organization about the same as that described by him?

A. Just about the same; yes, sir.

[fol. 658] Mr. Staley: That is all.

Examination by the Commissioner.

By Commr. Mitchell:

Q. How many cars does Wilson & Company ship a year, by rail?

A. About 1100, not from our own plants. We have fifteen plants and we probably ship about 500 or 600 cars from those plants.

Commr. Mitchell: That is all.

Cross-examination.

By Mr. McDonald:

Q. Mr. Kenney, you say your testimony, if you went into detail, would be substantially the same as that offered on behalf of Swift & Company and one other firm?

A. Yes, sir.

Q. Would your claim experiences be substantially the same also?

A. Well, I do not have actual figures, but it would be substantially the same, probably run a little higher than Mr. Dell testified to. I think we checked, and our claims on eggs are thirty some dollars per car, which is below the average reported in this report here (indicating).

Mr. McDonald: That is all I have.

Commr. Mitchell: Thank you, Mr. Kenney; that is all.

(Witness excused.)

Commr. Mitchell: Are there any other witnesses to be heard at this time?

(No response.)

Commr. Mitchell: Do any of the parties desire to make a [fol. 659] statement at this time?

Mr. McLean: Mr. Commissioner, I thought at this time we might discuss briefly the handling of the proposed amendment to the classification, that Mr. Hopkinson refered to this morning in his testimony. We were thinking of suggesting that the carriers would file that tariff in the regular manner, if the Commission sees fit to suspend it, if there are any protests that would then come regularly before the Commission and have a determination upon the propriety of the tariff. Perhaps the proceeding would be merged with this one, if there is one, but at least we feel that in order to get it regularly before the Commission we should file the tariff.

That is brought up at this time because it has some bearing upon when the next hearing might be held.

We would prefer Mr. Hodkinson's cross-examination to occur before the tariff is actually filed because the cross-examination might point out elements in the proposed tariff that we would like to consider.

However, we are interested in expediting the final conclusion of the proceedings as much as possible, and it would seem perhaps, if we file the tariff immediately and proceed along that line, it might be the quickest way to get it officially before the Commission.

Commr. Mitchell: It seems to me that the question involving supplemental tariff is something entirely in the hands of the carriers and they can file it whenever they [fol. 660] see fit, or not. That is up to them.

Just exactly when we would hold the next hearing is somewhat of a question also.

If you were going to file a tariff that question, if it was suspended, could be deferred, if it was referred, and that of course is a matter of the Commission to decide and not for me to decide.

Mr. McLean: What I had in mind was that it would hardly be proper to be cross-examining Mr. Hodkinson at length on the tariff if there were another proceeding directly involved in it.

Commr. Mitchell: We will continue this hearing at this time and see if we can hold a hearing in Washington within the next couple of months, and the question will have to also be determined by the Commission as to whether or not they think a hearing should be held on the Pacific coast. I think the hearing could be held quite promptly if it is believed advisable to do so.

So I think at this time we had better adjourn without fixing any definite date, and it can be fixed and notice can be given at that time.

Does anyone else have any statement to present at this time?

(No response.)

Commr. Mitchell: Gentlemen, I want to thank you for the very courteous and able manner in which you have [fol. 661-663] presented the evidence here. It is a very interesting case.

The problem seems to be one mainly of New York. When you look at these figures, you must come almost to that conclusion. When you see the total claim, if you deduct the amount of claim paid in New York, you haven't got such a large amount outside.

In the New York claim you have not succeeded in reducing any great amount, as far as I can see. The volume has been reduced, and that has been helpful to the railroads because it has reduced the amount of claim to be paid. So

I think the railroads should keep working on the New York situation and see if they cannot possibly reduce that to a fair amount.

* * * * * * *

[fol. 664] Mr. Matson: I will call Mr. Earl Winters.

EARL WINTERS was sworn and testified as follows:

Direct examination

By Mr. Matson:

Q. Your name is Mr. Earl Winters?

A. Yes.

Q. What is your position with the New York Mercantile Exchange?

A. I am currently chairman of the Traffic Committee.

Q. You are the same Earl Winters who testified at the Brooklyn hearing in this proceeding?

[fol. 665] A. Yes.

Q. Do you have a further statement you wish to make at this time in regard to the damage claims on eggs in the New York area?

A. I do.

Q. Will you proceed, please.

A. Since the question of dishonesty in damage claims on eggs in the terminal market of New York has been raised from time to time, it is in order at this time to explain just why certain factors prevent this practice.

In order to file dishonest claims on eggs there must be some sort of a deal made between or among certain parties involved. The logical place for a deal to start is between the shipper and the receiver. The egg business in New York is highly competitive and very few receivers are in such close position with their shipper to propose any "deal" on claims. In analyzing egg claims taken at random from the files of Zenith Godley Company, Inc., we find that at least 25 percent of the total dollar amount claimed is apportioned to labor and material. Since the type of labor used in the repacking of eggs for claim purposes is

"shape-up" there is a remote posibility that there can be any dishonesty in this item especially since the labor is directly under the supervision of the R.P.I.A. and the shipper and receiver have no control over the length of time consumed nor the amount of material used. The balance [fol. 666] of the claim is made for actual damage determined in the repacking process. On checking our various claims we find that the amount of money claimed for actual damage is the difference between the paying price made by the receiver to the shipper and the actual resale value of the offstock remaining after good eggs are segregated from the damage. He simply seeks to get back his cost on that part of the shipment damaged. In fact, the receiver is actually operating at a loss on these eggs because under the rules there is a certain amount of labor which the receiver must pay himself and which is not allowed by the railroad in filing a claim.

The total amount of money claimed for actual damage excluding labor and materials averages about one to one and a half cents per dozen eggs on the total shipments. This one to one and a half cents per dozen represents the average gross profit a receiver can hope to make on a carload of eggs due to the highly competitive nature of the egg business. Thus the minute a claim is filed on a car of eggs and until the claim is paid—this may not be for two to twelve months hence—the receiver has handled this carload of eggs for nothing or an actual loss. It is therefore logical to conclude that this practice of filing claims is not profitable to any parties concerned.

However, if it was possible that some sort of a deal be made between the shipper and receiver to file claims with the thought of gain, there must be a third party's aid en- [fol. 667] listed. This third party must of necessity be the R.P.I.A. It is at this point that any so-called deal would be made null and void. I have personally been associated with the old Trunk Line Association and more recently the R.P.I.A. for the past 10 years and have come into contact with many inspectors in butter, eggs, and fruits and vegetables. I have never in this time met and talked to an R.P.I.A. inspector or his superior who gave me any reason to think that he would lend himself to be a party in any

dishonest deal on claims. In fact, I have found these men to be very zealous in the protection of the railroads.

I have personally seen R.P.I.A. inspectors threaten to throw certain repackers off the job because they seemed to be slowing down in their work. In fact, I have also personally seen an R.P.I.A. inspector instruct the repackers to move any rings from their fingers before repacking eggs in order that any further damage might be avoided.

In view of the above facts, I personally do not see where any dishonesty can creep into any egg claim.

Q. Will you explain one phrase in your second paragraph, the phrase "shape-up," where you are talking about the type of labor?

A. Shape-up labor is the common term used to describe the type of labor we hire when we have to do this work. They are not the same gang of men every day. These men are union men not available to the same firm every day. [fol. 668] In other words, we cannot guarantee a man five days' work each week working on repacking eggs. These men may work a few days on our eggs and then we won't see them again for a week. As a result, we have to enlist labor from the union when we need men for this work.

Mr. Matson: That is all on direct.

Commr. Mitchell: Do you think a cent and a half per dozen—that is the average in New York; is that right?

The Witness: That is over and above labor and materials, yes.

Commr. Mitchell: Well, do you know the average claim, then, for a dozen eggs in New York?

The Witness: I am taking it from my personal files.

Commr. Mitchell: What year is that?

The Witness: September 9, 1949, to about October 12, 1949.

Commr. Mitchell: Do you think there could be any questionable handling of these claims in regard to setting aside of the cases because there is a checked or cracked egg in it?

The Witness: Do you mean any collusion?

Commr. Mitchell: Yes.

The Witness: No, I do not, because the R.P.I.A. inspector is there with the consignee's representative and inspects the eggs that are set aside.

Commr. Mitchell: As I understand it, they have a right to open a certain number of cases?

The Witness: That is right.

[fol. 669] Commr. Mitchell: And they can set them aside, and the consignee can take and get 40 cents for repacking that case if he wants to.

The Witness: I believe that is known as a joint inspection. There are a few such cases where there is a joint inspection, but by far and large my experience has been on carload lots where actual repacking is done and actual damage determined by repacking.

Commr. Mitchell: Well, your experience in the egg business in New York, from your experience there do you think the amount of claims the railroads pay there, of your own knowledge, is justifiable—that they should pay all those claims?

The Witness: I think it not only is justifiable, but they don't pay all the claims; I mean, we accept a certain amount of damage after repacking.

Commr. Mitchell: Your conclusion would have to be, then, that the railroads are not capable of hauling eggs into New York and delivering them in a fair condition.

The Witness: My conclusion is that they are capable, because——

Commr. Mitchell: Well, let me put it this way: That they don't do it.

The Witness: Not in all cases.

Commr. Mitchell: You will have to admit that where the railroads are paying back 50 percent of their revenue on that [fol. 670] traffic they cannot afford to haul eggs into New York.

The Witness: They have demonstrated that they can haul eggs into New York with no damage.

Commr. Mitchell: When?

The Witness: We have cases in our business from week to week where cars leave a certain point over a certain route and arrive in good order, and still others on the same routing that arrive damaged.

Commr. Mitchell: You know as a matter of fact that the railroads do pay back 50 percent of their egg revenues, in claims?

The Witness: So they claim.

Commr. Mitchell: If it were true that they do pay back over 50 percent of their revenue in claims, wouldn't you say that the railroads cannot profitably haul eggs into New York?

The Witness: Not on that basis.

Commr. Mitchell: So before they can do that something will have to be done to eliminate that excessive payment of claims; isn't that true?

The Witness: That is true, but——

Commr. Mitchell: Now, then, we are confronted with this 5 per cent rule that started this investigation. That is supposed to relieve part of this claim expense.

The Witness: That will relieve the railroads but it won't prevent any damage.

[fol. 671] Commr. Mitchell: Why do you want these eggs to come in by railroad? These truckers testify they can haul them in without damage.

The Witness: Because in my own instance we receive on an average on a Monday, say, 3,000 cases of eggs. My place of business is not large enough to handle that volume of eggs. If the trucking concerns had central dock facilities where those eggs could be handled, naturally we could use the trucks, but we are forced to use the railroads, and, in fact, we prefer to use the railroads, because of the facilities for handling that quantity, and because we can present a claim because we have the R. P. I. A. inspectors to inspect the damage.

Commr. Mitchell: Isn't it a fact that the railroads are more liberal on account of claims that you want to use them?

The Witness: No.

Commr. Mitchell: This record shows—nobody can be fooled about it—that outside of New York the claims are not termed excessive. Have you any idea why New York should be different from the rest of the country?

The Witness: I have only a thought on that. In our own experience we have found on analysis of our claims interline switching has a lot to do with our claims.

Commr. Mitchell: In and around New York, you mean?

The Witness: No, outside of New York. In other words, there are solicitors of other than through line railroads in

[fol. 672] the Middle West soliciting business from our shippers. We try to advise our shippers to ship straight line haul out of Chicago. Chicago seems to be one place where we can't go through without getting on to a belt line, or switching around Chicago. But our shippers prefer to use the Erie, B. & O., or New York Central——

Commr. Mitchell: I don't know about the B. & O., but the Erie is quite liberal in its payment of claims, isn't it?

The Witness: No. They pay claims, but they are not too liberal or too fast.

Commr. Mitchell: They pay the largest amount of anyone going into New York, in dollars.

The Witness: In our experience, we ship more Erie than other railroads because we get better service out of the Erie.

Commr. Mitchell: Is that service by way of claims?

The Witness: Absolutely no. Because in these claims I have just cited now there happens to be a majority of Erie claims still outstanding since September. We do not think that is good service if they don't pay the claims. We like the service they give out of the Middle West.

Commr. Mitchell: Do your claims run very high on the Erie?

The Witness: No higher in proportion than on any other railroad. In fact, they are running a little less than on other railroads.

Commr. Mitchell: You have no explanation to offer, then, [fol. 673] why in New York the claims paid are so out of proportion to what are paid in other parts of the country?

The Witness: No, I haven't because I only ship New York.

Commr. Mitchell: Are you through, Mr. Matson?

Mr. Matson: I am through, yes.

Commr. Mitchell: Cross-examination.

Cross-examination.

By Mr. Knowlton:

Q. Are any of your eggs inspected at origin?

A. Federally?

Q. Yes.

A. No.

Q. If it should develop that "X" percentage—I just say "X" because it means any percentage—of those eggs have shell damage at origin, is there any way that the railroads could get out of paying for those damages when those eggs reach destination?

A. When you say shell damage, do you mean actual damage, or age, or——

Q. What you define as shell damage——

A. When we pack in New York?

Q. Yes.

A. I doubt if you would find that at the point of origin in the Middle West.

Q. I think the record is complete on those points, but I am asking you if there is "X" amount of damage at origin is [fol. 674] there any way that the railroads can get out of paying claims for that damage when the eggs reach destination?

Mr. Canny: You mean under existing tariff rules?

Mr. Knowlton: Yes.

The Witness: Not that I know of.

By Mr. Knowlton:

Q. Then you would be getting paid for something the railroads are not responsible for.

A. Under the existing tariff rules that damage is accepted by us.

Q. In the case where you are filing a claim, if there is damage at origin you would be paid for that damage at the destination, wouldn't you, under the present tariffs?

A. No, I——

Mr. Matson: Just a minute. I would like to have Mr. Knowlton explain what kind of damage, and how it is ascertained.

Mr. Knowlton: Shell damage.

Mr. Canny: How is it ascertained?

Mr. Knowlton: I didn't put that in the question. I said if there is such.

Mr. Matson: I object to the question.

Commr. Mitchell: He can answer that.

By Mr. Knowlton:

Q. Suppose the car is backed up at one end and has six crates that have damage, and you go through and repack the car pretty well; wouldn't you be paid for any damage [fol. 675] that was present when that shipment was tendered at origin?

A. To my knowledge, there isn't any such shipment like that.

Q. All right. We are assuming that there is "X" amount of damage at origin and you are filing a claim on a car at destination, and having a car repacked. Wouldn't you be paid for any damage that was in that car when it was tendered to the carriers at origin, under the present tariffs?

A. Maybe, but you would have some left after you repack that might equal the point of origin damage.

Q. Can you figure out any way in which the carriers could avoid paying you for that damage that was in the car when it was tendered to them under the present tariffs?

A. As a railroad man, yes.

Q. Would you give us the benefit how to do it?

A. You are trying to do it with the 5 per cent rule.

Q. Your suggestion is that we could do it with a rule like the 5 per cent rule?

A. If it were point of origin damage.

Mr. Knowlton: That is all.

By Mr. Zearfaus:

Q. You are testifying on behalf of the New York Mercantile Exchange?

A. That is right.

Q. Has your investigation gone beyond the files of the Zenith Godley Company?

A. In our testimony at Brooklyn, we had, I believe, two other receivers' files included.

[fol. 676] Q. Who were they, do you recall?

A. One was Pressner and the other was Mierfield.

Q. Can you tell us how their claims compared with Zenith Godley? Did they have more or less?

A. About the same.

Incidentally, we were not investigating dollar claims, we were investigating damage on re-inspection after re-packing.

Q. How do you determine damage? Do you merely ask for an investigation when the crates show external signs of damage?

A. There are in attendance on New York piers R.P.I.A. inspectors to inspect as the cars are unloaded. Our men are there checking every car as it is unloaded. If he finds visible damage, the R.P.I.A. inspector is there to determine with him whether that car is bad order.

Q. Do you lift the tops of the crates to see if there is internal damage?

A. Yes.

Q. If you find one egg damaged do you ask for an inspection of the entire car?

A. I don't know that——

Q. Do you know?

A. Only from people I have talked to and asked.

Q. Do you know of your own knowledge? Do you know? You don't know of your own knowledge, do you?

[fol. 677] A. Only that I have asked.

Q. How many eggs would you find in a top layer of a crate before you would ask for further inspection?

A. Top layer, at least three.

Q. If it had three you would ask for an inspection of all of the crates in the car?

A. Yes.

Q. You are more tolerant, then, than other shippers might be. They ask for it if there was one?

A. They could ask for anything.

Q. I mean under the tariff they could have the right to ask, for one?

A. Yes.

Q. Now, you spoke about interline switching. Isn't it a fact that eggs going to other points than New York City would encounter interline switching?

A. Possibly.

Q. Do you have eggs which originate east of Chicago?

A. East of Chicago, no.

Q. Then in connection with your eggs from Chicago—do they originate in Chicago?

A. No, Iowa and Minnesota.

Q. Do they encounter a belt line movement at Chicago, do you know?

A. Yes.

[fol. 678] Q. Then your eggs would encounter an interline switching, as you term it——

A. At that point.

Q. That is, at Chicago?

A. Yes.

Commr. Mitchell: Where do they come from in Iowa?

The Witness: Iowa Falls, Coppock, Chester, Hubbard, various points.

Commr. Mitchell: Who are the shippers? Consolidators?

The Witness: They are what we call processors. You might call them—not consolidators—they have packing plants and grading stations.

Commr. Mitchell: You mean such as Swift & Company have? Swift has a plant at Iowa Falls. Do they ship to you?

The Witness: Occasionally.

Commr. Mitchell: The claims on Swift's eggs are very low, according to this record.

The Witness: That can be explained, too.

Commr. Mitchell: Let's have the explanation.

The Witness: We are different from Swift. We are receivers of eggs, and we sell them as such. In other words, they come in to New York and we sell the eggs as is. Swift and Armour and Cudahy generally ship to their own stations on a graded basis. From there instead of being sold as is they are put through their own candling rooms and graded out in cartons. In candling eggs there is a certain [fol. 679] amount of egg losses we all take, and possibly Swift would take that loss in their candling, whereas we have to allow for any damage a jobber might receive in the case of eggs.

Commr. Mitchell: You think that Swift absorbs part of the loss, that there is an added loss in Swift's eggs, but they absorb it, is that right?

The Witness: I believe they have just as much trouble as we do in damage.

Commr. Mitchell: Have you had any transactions with Swift?

The Witness: Only in connection with the eggs they ship us out of Iowa, which happen to be in the nature of eggs they are shipping us that they are not shipping to their own plants in the East.

By Mr. Zearfaus:

Q. Do you have any objection as a consignee to the use of the word "graded" in the tariff?

A. No.

Q. Do you have shipments which are described as current receipts?

A. Never.

Q. What designation do you use to describe your eggs——

A. Under the bill of lading, they are noted as large white eggs, grade A, large brown eggs, grade A; mediums, pullets, and so on.

Q. Do you use the term "rehandled" and "repacked"? [fol. 680] A. Yes.

Q. Is that on the bill of lading?

A. Stamped on the bill of lading with the origin point.

Q. Does it make any difference to you whether the designation is rehandled and repacked at the point of origin, or rehandled and repacked at another point?

A. Oh, yes. We handle them repacked at the rail head. We don't want them rehandled and repacked anywhere else if we can help it.

Exam. Mullen: Is that the point of your question?

Mr. Zearfaus: Yes.

Mr. Reilly: That is under the present tariff, of course.

The Witness: Yes.

Exam. Mullen: This witness said he would prefer to have the eggs repacked and rehandled at the rail head.

The Witness: That is right.

Exam. Mullen: That would be the definition in the tariff.

The Witness: Yes.

Exam. Mullen: Would all the eggs you buy necessarily be repacked and rehandled——

The Witness: At the present time, yes. We are not receiving any eggs other than from rail head points of origin. In other words, we don't have any stations other than a rail head where they are repacked and rehandled.

Exam. Mullen: Are all of the eggs you buy repacked and [fol. 681] rehandled at the rail head?

The Witness: Yes.

Commr. Mitchell: How are your claims running? You rehandle and repack everything at the rail head; are your claims heavy?

The Witness: No, they have been much lighter in the last six months in proportion to our total shipments.

Commr. Mitchell: Do you think that is due to the fact they have reduced the number of cases in the car from——

The Witness: No, I do not, because on a survey of our claims we find we have 600-case cars damaged and 384-case cars damaged. It doesn't seem to make much difference as to the load.

Commr. Mitchell: Do you know offhand the average in a car in the last six months?

The Witness: In dollars, about $180 to $210, depending upon the number of cases in the car.

Commr. Mitchell: The average claim per car amounts to somewhere between $180 and $200?

Mr. Matson: Is that per claimed, or per car received?

The Witness: Per claimed car. I didn't take into consideration the good order cars.

Commr. Mitchell: Well, now, just so that we get down to the exact situation, what is the percentage of cars upon which there is a claim fied?

The Witness: About 25 per cent at the present time, more or less.

[fo. 682] Commr. Mitchell: Twenty-five per cent?

The Witness: Of the total cars handled.

Commr. Mitchell: That would be about $50 a car, then, that your claims are running.

The Witness: That is right.

Commr. Mitchell: Is there any further cross-examination?

By Mr. Reilly:

Q. Are those cars you receive in apparent good order—75 per cent—that does not mean that there may not be shell damage in those cars which you accept without question; is that correct?

A. That is true.

Q. So, Mr. Winters, in your opinion would it be possible for a carload of eggs to be loaded at rail point of origin without there being present some shell damage either in the form of cracked or checked eggs?

A. No. There is a possibility, the human element there.

Mr. Reilly: That is all. Thank you, Mr. Winters.

Commr. Mitchell: Any further cross-examination?

By Mr. McDonald:

Q. Mr. Winters, do I understand that you are testifying on behalf of the New York Mercantile Exchange, and all its membership, or solely upon the basis of your own personal knowledge in connection with shipments of the Zenith Godley Company?

A. I am testifying for the egg trade, under instructions from them.

[fol. 683] Q. Are you familiar thoroughly with the claim practices followed by other members of the Exchange than yourself when they make claims on the railroads?

A. I can only go by what I have seen in their filing of claims; they have showed me their documents.

Q. Do you have anything to do with the pursuing of a claim by another firm other than your own?

A. No.

Q. So actually your knowledge of the claim practice and procedure of any other member of the Exchange, other than Zenith Godley, would be entirely hearsay—what others have told you?

A. That is right.

Q. With respect to your shipments of Zenith Godley Company, do you have any shipments that come in to the New York metropolitan area other than on Manhattan Island?

Q. All of your shipments come in to some point on Manhattan Island?

A. That is right.

Q. You do not have any shipments, for example, to Jersey City, Newark, Fresh Pond, or Port Morris, N. Y., or anything like that?

A. No.

Q. To what extent do you use a carrier into Manhattan Island other than Erie?

[fol. 684] A. We try to split our business equally among the various railroads.

Q. To what extent has that been done within the last year?

A. Within the last year we have narrowed it down to practically between two railroads, the B. & O. and the Erie.

Q. Would you say there is any noticeable difference in your claim experience, Erie versus B. & O.?

A. No.

Q. Do you have any basis for thinking that the New York City damage would be attributed solely to the incidents of floating eggs from the Jersey rail head to the New York side?

A. No—well, yes, at times. And there is something I cannot quote facts or figures about, but I have seen cars put on floats—I don't know that they contained eggs, or what they contained. I have seen they have had a tough time with them sometimes going onto a float. They come onto a float at Jersey City, but they don't go off of a float at New York City.

Q. In other words, then, your answer to my original question would be that you have no basis for thinking that floating is an important factor from the damage standpoint of New York City?

A. Except at the yard where the trains are broken up it entails breaking up the trains and putting the cars onto a float.

[fol. 685] Q. That supposition would be by virtue of the fact that in your mind you can see the necessity for switching the cars at that point?

A. Yes.

Q. You spoke of your eggs being repacked at the rail

origin. By that do you mean that any and all eggs your company buys are actually repacked at the point where they are tendered to the railroad for transportation, or is it possible that those eggs may have been repacked at country points and trucked a considerable difference?

Mr. Matson: Objection.

Commr. Mitchell: He answered that question definitely no, that they were actually repacked and rehandled at the rail point of origin.

Mr. McDonald: I wasn't clear about that. I wondered if he was broadly construing the point of origin.

Mr. Matson: Could we have the witness tell us what he means by the point of origin?

Commr. Mitchell: Didn't you say the eggs were repacked and rehandled at rail point of origin?

The Witness: Yes. And by that I mean the railroad siding is within half a mile of the plant, or right at the plant.

Commr. Mitchell: That is pretty clear.

Mr. McDonald: That is all.

Commr. Mitchell: Redirect examination.

[fol. 686] Redirect examination.

By Mr. Matson:

Q. Are cracked eggs packed at origin point?

A. Cracked eggs packed?

Q. Yes.

A. They are packed and so designated on a bill of lading.

Q. Suppose in a sound case of eggs, do the shippers pack cracked eggs in a sound case of eggs?

A. No, not intentionally.

Mr. McDonald: Mr. Commissioner, I am going to object to that unless this witness knows of his own knowledge. There is nothing in this record to show that he knows how they pack them at the point of origin.

Commr. Mitchell: What is the question?

Mr. Matson: Whether the shippers ever pack any cracked eggs in sound cases.

Commr. Mitchell: Well, I think that is a little broad unless he knows.

The Witness: I cannot testify to every car that is shipped. I can only testify to the cars I have seen. I make trips out there ~~once or twice~~ a year, and I have seen them pack the eggs and load them.

Mr. Matson: Mr. Commissioner, the witness was asked a double-barreled question on cross-examination as to whether eggs were packed that are cracked or checked——

Commr. Mitchell: Well, you asked him whether the [fol. 687] shippers packed cracked eggs in sound cases. "Shippers" covers a lot of territory. If he testifies to what his knowledge is, that he saw them packed, that is fine.

By Mr. Matson:

Q. Did you say you go out into the Middle West where they do this packing?

A. I do.

Q. Did you ever see them pack a cracked egg in a case?

A. I did not.

Q. Do you have any reason to think that they would consciously put a cracked egg in a case?

A. They wouldn't.

Q. Do you think they would have any reason why they would avoid putting cracked eggs in sound cases?

A. Yes. They have a little pride out there in what they do, and that means a lot in the price of eggs when they ship.

Q. You stated on cross-examination, when you were asked if they actually do put cracked or checked eggs in sound cases,—what type of shell damage did you have in mind when you answered yes?

A. It wouldn't be noticeable. It would be the human element of letting something slip by when they are putting them through the candling lamp.

Q. Will you clarify your statement that you now desire to buy eggs that are repacked at the rail head? Why is it that you want to buy eggs that are repacked at the rail head? [fol. 688] A. When we buy eggs out of the Middle West in New York we buy them to resell. Due to heavy production of eggs naturally there will be probably an in-storage movement. The closer we can get the repacking done to destination the better we are off in reselling. We do not

want our eggs stored out at some point and then trucked and reshipped. We would rather have the eggs repacked at the rail head so that any damage can be detected there and put out before they are reshipped.

Q. When you say "rail head," you mean——

A. Either at a siding at that particular station, right at the door, or somewhere within the city limits.

Commr. Mitchell: Have you had experience with eggs trucked in that are not repacked at the rail heads, Mr. Winters?

The Witness: I don't understand that question.

Commr. Mitchell: You said today you would rather have your eggs shipped to you that are rehandled and repacked at the rail head because they come in in better condition —is that the reason?

The Witness: We feel so, yes. We don't want any factors to enter into the deal that might damage the eggs—any extra handling.

In other words, I suppose you mean that somebody repacks the eggs, puts them on a truck, and trucks them 30 miles to the rail head——

Commr. Mitchell: I mean eggs that are not repacked and [fol. 689] rehandled at the rail head.

The Witness: We try not to handle those kind of eggs.

Commr. Mitchell: Do you believe that the trucking of eggs for 150 to 200 miles damages the eggs to any extent?

The Witness: There is always the hazard that any extra handling will damage eggs.

Mr. Matson: That is all I have. Thank you.

Recross-examination.

By Mr. Zearfaus:

Q. In connection with the checked eggs or cracked eggs, you say you have never seen any of them put in crates.

Isn't it possible that such eggs might be checked or cracked which are not visible to the naked eye at the time?

Commr. Mitchell: He testified as to that.

The Witness: Yes.

Mr. McDonald: I would like to ask one question, if I may.

By Mr. McDonald:

Q. Mr. Winters, you testified, if I followed you correctly, that you thought one reason the experience of Swift & Company was better at New York than yourself, was because in your judgment, or in your opinion, they repacked and regraded their eggs after they reached New York. Was that your statement?

A. Yes.

Q. If the record shows clearly that that is not the case, and that in fact Swift & Company packed their eggs at the point of origin, in other words, their grading is done before [fol. 690] the eggs are shipped, would you have any explanation to offer in lieu of your explanation?

A. I have no doubt that Swift & Company do regrade and pack at point of origin, but due to State laws—they are shipping in 30-dozen cases, regular standard cases—but at point of destination they again go through those eggs and put them in cartons and due to State laws they have to fulfill certain qualifications and, therefore, they go through all the cases again.

Q. So that is what you mean when you speak of repacking in the case of Swift at destination?

A. I mean putting them from the cases into cartons.

Q. That would be, in other words, when they repack for retail purposes rather than anything else?

A. That is right.

Q. Apart from retail repacking, would you have any other explanation for the Swift & Company experience?

A. No.

Q. None at all?

A. No, sir.

Mr. McDonald: That is all.

Mr. Matson: One question about this matter of cracked eggs that slip by at point of origin.

Would that be detected by inspection at the point of [fol. 691] destination, New York?

The Witness: Not visibly. If it was not detected at the point of origin it wouldn't be detected here unless the egg was leaking——

Mr. Zearfaus: Isn't it possible that in the case of a

cracked or checked egg at destination, after it travels several hundreds of miles it would be in worse condition on arrival than when it left destination?

The Witness: Not unless it was mishandled.

Commr. Mitchell: Now, I think we have gone far enough with this witness' testimony in that respect.

If an egg is transported anywhere it is further possible that it would be further damaged by rehandling.

Mr. Matson: That is all.

Commr. Mitchell: You are excused.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Matson: We have Mr. Schilt here, Mr. Commissioner, or we can go ahead with the Army witness, whichever you prefer.

Commr. Mitchell: We have no preference.

Is the Army ready?

Mr. Krebill: Yes, Mr. Commissioner.

I want to say at this time that the witness we have available will testify concerning receipt of eggs at San Francisco. I do not know whether this is the proper point to receive that evidence, or do you want to receive it later in [fol. 692] the day?

Commr. Mitchell: Any time you want to offer it.

Mr. Krebill: We are prepared to go ahead.

Commr. Mitchell: All right.

W. F. Streving was sworn and testified as follows:

Direct examination.

By Mr. Krebill:

Q. Will you state your name and position, please?
A. W. F. Streving.
Q. Where are you employed?
A. I am employed by the Department of the Army.
Q. What is your position there?
A. Transportation specialist.

Q. Are you the same Mr. Streving who testified at the Chicago hearing?

A. Yes, I am.

Q. Have you made further studies and prepared an additional exhibit pertaining to this case?

A. Yes. I have a study of material relative to egg shipments received at the San Francisco, Calif., Quartermaster Market Center, and inspected by the Veterinary Corps Inspector at destination.

I have prepared a one-page statement showing the total number of shipments received by cars, total cases in shipments, and the number of cases damaged or rejected to the [fol. 693] carrier by months, for a half year period, commencing 1 December, 1948 to and including 31 May, 1949, which also shows the same information comparative as to truck shipments.

Mr. Krebill: At this time I would like to have the exhibit which has been described, and which has been distributed, marked for identification. It is headed "Statement on Shell Eggs Received at San Francisco, Calif., Quartermaster Market Center."

Commr. Mitchell: It will be marked Exhibit No. 39.

(Exhibit No. 39, Witness Streving, was marked for identification.)

By Mr. Krebill:

Q. What does your study and the exhibit show?

A. The study reveals that a loss of shell eggs upon arrival at San Francisco Quartermaster Market Center was very low; indeed, for the period indicated the damage or rejection out of 155,660 cases received by rail, only 31 cases were damaged, or otherwise stated, .000199 per cent were damaged or rejected.

The motor carrier picture in comparison showed a slightly higher damage and rejection picture, as out of 162,353 cases, 653 cases were damaged or rejected, or .00402 per cent of the total—a small part of percentage in either case.

Q. I believe you stated that the number of cases received by rail was 155,660?

A. That is correct.

[fol. 694] Q. Is that correct?

A. 155,677 cases.

Q. Where did this traffic originate?

A. This traffic originated for the most part, and I would say at least 95 per cent, in the Middle West in Iowa, Nebraska, Minnesota, Colorado, and a substantial part at Chicago, Ill. In other words; it constituted in effect transcontinental traffic.

Q. Your study, then, would indicate that the percentage of damage is very small, would it not?

A. That is right, yes.

Q. And how would the tolerance rule affect this?

A. Well, we would be adversely affected by the tolerance rule so far as to be paid for damage which we didn't incur.

Commr. Mitchell: How would you be adversely affected?

The Witness: Well, suppose we procured it at an off-rail point, as it is right now——

Commr. Mitchell: Your damage would be pretty slight, wouldn't it?

The Witness: That is right, but still we wouldn't get any pay at all.

Suppose we had 30 cases loss in a carload. We wouldn't get any pay under the set-up.

Commr. Mitchell: That would be your only loss, would be the 30 cases.

[fol. 695] The Witness: Which would amount to $452.

Commr. Mitchell: Not on 30 cases.

The Witness: Thirty cases. Six hundred cases in the average shipment.

Commr. Mitchell: What is the price of a case of eggs?

The Witness: All the way from $15 to $18. It depends on the market. Right now it is a little lower, I believe.

Commr. Mitchell: How many dozen eggs in a case?

The Witness: Thirty dozen.

Commr. Mitchell: Did you introduce any evidence in regard to what your damage was at New York.

The Witness: Yes, sir. We had a three years' period.

Commr. Mitchell: You have an exhibit in the record with regard to that?

The Witness: That is right.

Commr. Mitchell: It was much higher?

The Witness: Yes, it was higher in New York.

Commr. Mitchell: All right.

By Mr. Krebill:

Q. The exhibit at New York showing receipts at New York showed a higher percentage?

A. That is right.

Q. But it was still much less than 5 per cent, was it not?

A. Oh, yes, it was in fact .0062. In other words, six-tenths of one per cent at New York.

Q. What do you consider is of value in this exhibit in addi-
[fol. 696] tion to what you have already shown?

A. It shows that on westbound traffic the damage and loss is considerably less than eastbound, in spite of the fact that the average haul westbound is longer, and shipment, be it by rail or truck, are transported over equal if not more hazardous roads inasmuch as all or a great number have to pass through the Rockies to reach the destinations in the West.

A conclusion may well be drawn by this comparison, that as it is claimed that the principal damage and loss on eggs occur in the East, the eastern carriers, and especially at New York City terminals, do not handle their egg shipments as carefully as they should, or possibly could, and that under the modern packing method eggs as a single commodity should not, and in justice hardly could, be made subject to a penalty such as the 5 per cent tolerance rule now in effect, or any other tolerance rule——

Mr. Knowlton: I want to object to that. This witness is not competent to pass upon the care in handling of the eastern roads as compared to the western roads.

Commr. Mitchell: That is overruled.

Mr. Canny: If this is a prepared statement, can't we have a copy of it?

The Witness: I have not a prepared statement. This is my own notes.

Commr. Mitchell: He hasn't a prepared statement.

[fol. 697] Mr. Zearfaus: He is reading from it.

Commr. Mitchell: It is a memorandum.

The Witness: This is my memorandum.

Commr. Mitchell: Proceed.

The Witness: —or any other tolerance rule, for instance, such as was proposed by the Consolidated Classification Committee' special dockets on which hearings were held at Chicago, Ill., 24 January, 1950.

The position of the Army, Air Force, and Navy is the same as expressed at the Chicago hearings.

Mr. Krebill: That is all on direct.

Comr. Mitchell: Cross-examine.

Cross-examination.

By Mr. Zearfaus:

Q. Do you know that the cases reported damaged at San Francisco were cases that were examined for concealed damage?

A. I do not know.

Commr. Mitchell: Examined at what point?

Mr. Zearfaus: At San Francisco. I am speaking now of the cases which are shown on Exhibit No. 39.

The Witness: I do not. I just took this off the records.

By Mr. Reilly:

Q. Mr. Streving, do you know what type of examination of the eggs were made at San Francisco?

A. They generally receive what they call a class 2 examination.

[fol. 698] Q. What is a class 2 examination?

A. Well, the Veterinary Corps examines them, 20 cases, and most of the time they pull out 30 cases.

Q. Do they click them or candle them?

A. I don't know.

Q. Do you know whether these eggs received any inspection by the Veterinary Corps for the Department of Defense at the point of origin prior to shipment?

A. That is the custom, sir.

Q. Do you know whether any damage existed in these cases at the point of origin?

A. I don't know.

Commr. Mitchell: And you say they are inspected at point of origin by the Army?

The Witness: Yes, that is the general procedure.

By Mr. Reilly:

Q. So you don't know of your own knowledge whether or not this per cent of damage which you show in your Exhibit 39 existed at the time the eggs were tendered to the carriers at the point of origin for transportation?

A. I don't know.

By Mr. Knowlton:

Q. At the Chicago hearing several months ago you said you didn't give us that information because you hadn't had time.

Commr. Mitchell: Ask him a question. Don't lecture him.

By Mr. Knowlton:

Q. Why haven't you presented that evidence here?

[fol. 699] A. What evidence?

Q. As to the status of these eggs at point of origin.

A. That is not within my province. That is a matter for the Quartermaster Market and the Veterinary Corps, and we had qualified witnesses for that on the stand, I believe.

Q. You said you were a statistician, I believe, and were compiling these figures from Army records.

A. Just what I have on here.

Q. And you had Army inspectors' reports available on the condition at origin?

A. That is right.

Q. Why didn't you produce those for the Commission?

Commr. Mitchell: He answered that question. He said it was not within his province.

By Mr. Knowlton:

Q. Why isn't it? If you have access to the destination reports——

A. First, because we didn't have the time to do it——

Q. That is what you told us at Chicago.

Commr. Mitchell: Now, let me state this into the record. The railroads are here with seven lawyers whom I see, and I am going to hold you to strict cross-examination of these witnesses. I think you are stepping out of the record entirely. If you have some questions that are pertinent, you may ask them.

[fol. 700] Mr. Knowlton: Mr. Commissioner, I don't want to step out of the record, but on the record at page 342 I protested this and asked the witness why he did not give that information.

Commr. Mitchell: Well, go ahead and ask him and let's get it over with. Don't waste a lot of time here.

By Mr. Knowlton:

Q. Could you have gotten that information if you had asked for it from the Army?

A. If the time had been allotted to me to get it, I suppose we could have.

Q. Did you make the request?

A. Yes, but due to pressing business it couldn't be granted.

Q. When did you make the request—right after the Chicago hearing?

A. I couldn't tell you by the exact date.

Q. Well, roughly, within a month.

A. Last fall some time. I believe it was a matter of funds.

Commr. Mitchell: What is the information you want?

Mr. Knowlton: The condition of these eggs as shown by the Army inspection at the origin points in Iowa.

Commr. Mitchell: There is only 31 cases they found anything wrong about in this exhibit. He is not testifying now as to the New York eggs. There are only 31 cases here.

Mr. Krebill: May I inquire of counsel whether he has reference to the inspection reports relating to the specific shipments covered by this Exhibit No. 39?

[fol. 701] Mr. Knowlton: I include that, but I am surprised that this statement comes in here from this witness after being asked for the information in the Chicago hearing, and the witness at that time said that he didn't have time to obtain it. Now, months later he comes in here and presents another——

Commr. Mitchell: Now, you are not making a statement that is going into the record, Mr. Knowlton. I am conducting this hearing and if you don't like it you can appeal to the Commission, but you are going to obey the rulings I make here or you can step aside.

Mr. Knowlton: May I answer the question asked by counsel, Mr. Commissioner?

Commr. Mitchell: But you may answer it, but that does not require a long statement. We want to get along with this hearing.

Mr. Knowlton: The answer is: I am speaking of all of Mr. Streving's evidence. That would include New York as well.

Mr. Krebil: My answer to that is that the evidence that has already been put in by the Veterinary inspectors, both at origin and at destination, show what type of inspection is given to the eggs at both origin and destination.

Now, as to the specific shipments here covered, I don't know that that could be furnished, or not.

Commr. Mitchell: Where did you make this request for this information, Mr. Knowlton?

[fol. 702] Mr. Knowlton: We cross-examined Mr. Streving on page 342 of the record, and asked him—do you want me to read it? I didn't make a definite request. He just said he didn't have time to give it to us at that time.

Commr. Mitchell: Then you know as well as I do that that is not material at this time at all. You have no right to cross-examine this man about that now.

Let's read this from the transcript of your questions, and the answers at that time.

"Q. Then you had the information available, didn't you?

"A. I did not.

"Q. You couldn't get it?

"A. Not in that time.

"Q. Then if you didn't have the complete picture, and you left out the damage at origin, how can you draw conclusions?

"A. We can draw pretty well conclusions, as I stated before, our inspection at origin is much more rigid and another witness will cover that.

"Q. Well, you just say it is more rigid, but you don't

give us any results. Now, is it fair to ask the Commission to draw a conclusion with that important part of the information omitted from your statistics? Is that a business-like way of presenting something, do you think?

"A. I think we have presented the best picture which was obtainable.

[fol. 703] "Q. That is because you didn't have time; is that right?

"A. That is right.

"Q. If you had had time you would have presented a different picture, would you?

"A. I don't know that it would be different.

"Mr. Knowlton: That is all."

Now, what we have before us here is a matter of 31 cases. I think this witness has been very fair.

Is that all?

Mr. Knowlton: I have nothing further.

Commr. Mitchell: Any further cross-examination?

Mr. McDonald: I have a question, Mr. Commissioner, if I may.

Commr. Mitchell: All right.

By Mr. McDonald:

Q. Mr. Streving, in commenting on your Exhibit No. 39, I think you were asked whether or not you were able to draw any conclusions from that, and speaking from your prepared notes you undertook to say that you had. I couldn't hear you very well, and I wonder if you would tell me again what that conclusion was.

A. From where would you like to have it, sir? You mean the last passage?

Q. It was a comparison you made which I understood you to say enabled you to conclude something about the western carriers versus the eastern carriers.

Commr. Mitchell: He said the western carriers did a bet-[fol. 704] ter job than the eastern carriers. Didn't you hear that testimony?

Mr. McDonald: I didn't hear that very clearly, Mr. Commissioner.

The Witness: The conclusion may well be drawn by this

comparison, that as it is claimed that the principal damage and loss on eggs occur in the East, the eastern carriers, and especially at New York City terminals, do not handle their egg shipments as carefully as they should, or possibly could, and that under the modern packing method eggs as a single commodity should not, and, in justice, hardly could be made subject to a penalty such as the 5 percent tolerance rule now in effect.

By Mr. McDonald:

Q. Is this based entirely upon the mathematics or statistical figures you have, and nothing else?

A. The two comparative studies.

Q. You haven't made any studies of the causes of the damage in the East or West, as such, have you?

A. No, sir.

Q. Have you made any study whatsoever of the method of handling eggs around the New York terminal area?

A. I have not.

Mr. McDonald: That is all.

Commr. Mitchell: Any further examination?

Mr. Staley: I have a question or two.

By Mr. Staley:

Q. Did you make any examination or check to determine how many of the 653 cases which were damaged, and [fol. 705] which were moved by truck, how many of those were in a single truck?

A. No, I have not. I didn't make any distinction between them. I took the shipments as a record as a whole.

Mr. Staley: That is all.

Commr. Mitchell: Any further cross-examination?

Thank you, Mr. Streving. That is all.

(Witness excused.)

Mr. Krebill: I have nothing further, except that at this time I would like to offer Exhibit No. 39 in evidence, Mr. Commissioner.

Commr. Mitchell: Is there objection to Exhibit 39?

(No response.)

Commr. Mitchell: It will be admitted.

(Exhibit No. 39, Witness Streving, was received in evidence.)

Mr. Matson: If the Commission please, I will call Mr. Schilt for cross-examination.

LEON SCHILT was recalled and testified as follows:

Direct examination.

By Mr. Matson:

Q. Mr. Schilt, are you the same Leon Schilt who testified at the Brooklyn hearing in this proceeding?

A. Yes.

Mr. Matson: Mr. Schilt is ready for cross-examination at——

[fol. 706] The Witness: Before cross-examination, Mr. Commissioner, there are a few minor corrections I would like to make in my Exhibit No. 35.

Commr. Mitchell: All right. You may go ahead with them.

The Witness: Page 8, column 4, under the year 1949, we overlooked inserting cross-reference No. 8 before the figure "47,571."

On page 20, under column 2, line No. 3, the figure should be 1,036,592 cases. Under column 5, the figure should be 2,206,418. These corrected figures do not change in any way the percentage relationship to the year 1939, nor do they change the percentages that the rail and truck receipts are to the total volume.

On page 22, under column 6, line 19, that index number should be 137 instead of 37.

On page 23, under column 9, on line 5, that index number should be 129 instead of 29.

Also on page 23, under column 2, on line 17, the correct figure is 2,088,753 cases, and under column 5, the same line, the correct figure for the receipts at the 11 markets is 8,213,297.

These corrected figures likewise do not alter the percentage relationship of the January to July period of 1947, nor is there any change in the percentage of total receipts by each mode of transportation.

On page 36, incidentally, there is another correction. Under column 11 for the years 1939 and 1940 the two first [fol. 707] figures should be reversed as to position. For 1939 it should read 2,163, and for 1940 it should read 14,231.

To the best of my knowledge, those are all the corrections that are necessary. I am ready now for cross-examination.

Commr. Mitchell: Cross-examine.

Cross-examination.

By Mr. Zearfaus:

Q. Mr. Schilt, you have testified that you are employed by the Department of Agriculture and engaged in handling transportation problems.

Will you state more specifically what you have in mind when you say transportation problems, and particularly in connection with claims practices?

A. My duties are to review any changes being made in tariffs which may affect the cost of transportation for dairy products, which include eggs, and if they adversely affect the agricultural interests, why, we are authorized under the two Acts of Congress to participate in behalf of, or to assist producers in having such inequities, if we find them, corrected.

Commr. Mitchell: You said adversely the farmer. Does that mean that any time the rate is increased you consider that adversely affecting the farmer?

The Witness: Inasmuch as it takes money out of his pocket, I should think so.

Commr. Mitchell: So every time there is a rate increase the Department considers that adversely affecting the farmer.

[fol. 708] The Witness: That would all depend upon the circumstances and conditions surrounding the carriers' petition for the rate increase.

Commr. Mitchell: Go ahead.

By Mr. Zearfaus:

Q. Now, to the extent that the claim practices are involved, to what extent do you go into it—freight claim practices?

A. Well, the facts as I know them are this: With the inception of the 5 percent tolerance rule in connection with rehandling and repacking eggs, we are informed that the consignees would not absorb that tolerance, and that any losses involved in connection with the tolerance would be passed back to the shipper.

Mr. Reilly: By whom were you informed, Mr. Schilt?

The Witness: By the receivers in New York City.

Mr. Reilly: How many receivers in New York City?

The Witness: I have met with quite a number of them.

Mr. Reilly: Could you name them for the record?

The Witness: I will be glad to.

W. Elsea Company, Mersel & Company, Adolf Fortgang, Pressner Brothers——

Commr. Mitchell: Have you that information available there?

The Witness: Only in my mind, sir. I am trying to recall all of the names of the parties I spoke to in my various visits to New York City.

Mr. Reilly: Did they approach you, Mr. Schilt, or did you [fol. 709] approach them?

The Witness: Originally, I was approached by Mr. Willard P. Brown, the then chairman of the Traffic Committee of the New York Mercantile Exchange, and Mr. John McClay, president of the Zenith Godley Company, at the outset of the carriers' intentions to establish a 5 percent tolerance in connection with loss and damage to egg shipments.

Mr. Reilly: Then did you in turn contact these other receivers in New York and ask them whether or not they would absorb this 5 percent or pass it on?

The Witness: Oh, yes.

Mr. Reilly: You made the approach?

The Witness: Yes, I made the approach as to how they were going to cope with it.

Incidentally, there was one other person, Robert Zadra of the New York Egg Auction, who showed me a telegram

sent to the shipper at the time the 5 percent tolerance rule went into effect, and in that telegram he stated that he could not accept any shipments from that particular shipper unless that shipper was willing to absorb the 5 percent tolerance in event the car arrived in damaged condition.

By Mr. Reilly:

Q. Is it your opinion, Mr. Schilt, that if any damage existed in these eggs at the time they were tendered to the carriers for transportation, that the railroads should absorb it?

[fol. 710] A. That all depends on what you call damage.

Q. If any shell damage exists in a shipment of eggs tendered to the carrier for rail transportation, as between the consignee, the railroad, and the shipper, is it your opinion, speaking for the Department of Agriculture, that the carrier should absorb that damage?

A. It still depends on the extent of the damage. There are various stages of damage to an egg. I think I mentioned that in my testimony.

Q. Let us say that one percent visible shell damage exists in the egg when tendered to the carriers for rail transportation——

A. You mean one percent checks, one percent cracks, one percent leakers, one percent smashed eggs?

Q. One percent checked eggs.

A. One percent checked eggs.

Q. Yes, sir.

A. And your question?

Q. My question is: As between the farmer, consignee, and railroad company, is it your opinion, speaking for the Department of Agriculture, that the railroad should pay a claim for that one percent damage that existed to the eggs prior to their tender to the carrier for transportation?

A. I don't think that any claims are filed for one percent checks.

Mr. Reilly: I think he can answer that, Mr. Commissioner.

[fol. 711] Commr. Mitchell: You can give your opinion on that, Mr. Schilt. Go ahead.

The Witness; I think the attorney is going off the deep end on his question, and——

Mr. Reilly: I object to the characterization, Mr. Commissioner. I think I asked a very pertinent question.

Commr. Mitchell: Read the question, Mr. Reporter.

I think you can answer that question, Mr. Schilt. If you cannot answer it, just say so.

(Question read.)

The Witness: If—that cannot be answered with a "yes" or "no"—if that one percent damage is removed from the case at destination as checks——

Commr. Mitchell: Now, Mr. Schilt, did you understand the question asked?

The Witness: The question, as I understand it, Mr. Commissioner, is: Is it my opinion that the railroads should pay for one percent of the damage that may have been in the case at origin.

Commr. Mitchell: That is right. Do you think the railroads should pay if there was one percent damage at origin? Should the railroad pay that claim?

The Witness: The railroads should not pay that claim if the eggs are removed at destination and charged in the claim.

Commr. Mitchell: Well, I don't understand that.

[fol. 712] The Witness: Well, generally, at origin the examination for damage is made——

Commr. Mitchell: Here is the question that is asked you, and we are not going anywhere if we go along this way.

The question, as I understand it, is a simple question: Should the railroads pay as a claim damage to eggs of one percent that were in the cases at origin?

Mr. Matson: Mr. Commissioner, may I suggest that the witness is confused because it is a hypothetical question rather than a practical question. The question is: If there was one percent in there should the railroads pay for that damage.

Commr. Mitchell: All right.

Mr. Matson: If I may answer as counsel, I would say no.

Commr. Mitchell: We would like to have the witness

answer. I think we are entitled to have the witness answer it.

Mr. Matson: I don't want to mislead the witness.

The Witness: I am not being misled by counsel. It is just that I view this loss and damage situation from a different point of view.

Damages at origin are generally found with the aid of a candling lamp in an ordinary federal or State inspection.

Mr. Reilly: Mr. Commissioner, I put a simple question to the witness, and I didn't put in any candling——

Commr. Mitchell: I think you can answer that, Mr. Schilt. If you cannot answer it, say so.

[fol. 713] The Witness: I will answer it this way: If the railroad did not create the damage, they should not be called upon to pay for it.

Mr. Staley: May I ask one question?

Commr. Mitchell: Well, there is one man already questioning.

Mr. Reilly: I am through on that particular point, Mr. Commissioner.

Commr. Mitchell: We will give you a chance a little later, Mr. Staley.

By the way, I am going to have to withdraw for a few minutes on account of a conference at 11 o'clock, but I will be back shortly thereafter.

Go ahead with the cross-examination. And I think we will get along a little faster, Mr. Schilt, if you will answer the questions as they are asked, and if you cannot answer them just say so. It is not for you to reframe the questions. The lawyer has fortunately, or unfortunately, the right to ask any questions he wants to.

If your counsel does not think it is a proper question he will object to it.

The Witness: I will try to follow your instructions, Mr. Commissioner.

By Mr. Zearfaus:

Q. I believe I was asking you about practices as to claims, and we got off into this discussion as to who in [fol. 714] New York drew your attention to this particular situation.

What I want to know is: To what extent do you have knowledge of the claim practices in connection with the shipment of eggs?

A. In my testimony, I believe I mentioned that I spent from 1928 to 1938, inclusive, engaged in traffic and transportation work with a cooperative sales organization specializing in the sale and distribution of several thousands of carloads of eggs annually.

Now, in my duties in some instances I inspected the cars upon arrival. In most instances, the reports were sent to me from our man assigned to the job of making these daily inspections, and we arranged for the rehandling of damaged shipments, and reported all the damage and the details for claims purposes to our shippers out on the West Coast.

Q. Where were you employed at this particular time by the cooperative sales organization?

A. In New York City.

Q. By what company?

A. The Pacific Egg Producers Cooperative, Inc., located at 178 Duane Street, New York City.

Q. Was it a part of your duties to file claims for loss and damage to eggs?

A. The loss and damage claims were filed by our people on the West Coast. We filed loss and damage claims in New [fol. 715] York City against the local carriers.

Q. You mean the truckers?

A. Truckers or rails, or boat lines, depending upon the disposition made of the eggs after they arrived at New York City.

In other words, on the outbound movement if any damage occurred in connection with any shipment we handled the claim at the New York end. But if it was in connection with the movement of the West Coast to the East West, we referred all our details back to the people on the West Coast who in turn filed claims against the carriers for any losses that may have been determined in connection with rail transportation.

Q. Are you saying that in connection with any shipment coming into New York City by rail the claim was not filed by you but by the Pacific Coast people?

A. That is right. On the basis of information we furnished to them.

Q. Do you know what inspection was made of the eggs?

A. Yes.

Q. That was 10 years ago, was it not?

A. Yes. The same practice prevailed then that is currently prevailing.

Q. Do you know what the practice is that is currently prevailing?

A. My investigations at New York City, sir.

Q. By what someone has told you?

[fol. 716] A. In my several visits to New York City I always manage to find time to go down to the docks and see firsthand what is going on down there in connection with the receipt of eggs coming in from points beyond New York City.

Q. What docks do you visit?

A. D. L. & W. on Pier 13.

Q. When?

A. At various intervals during the past several years.

Q. What time of the day were you there?

A. In the morning, as I recall. In fact, in one of those occasions Mr. Matson was with me.

Q. At what hour?

The Witness: Do you recall the hour, Walter?

Mr. Matson: I would think about 10 o'clock in the morning. That is my recollection. I was not prepared to testify on that.

By Mr. Zearfaus:

Q. Were they unloading from the barges or floats at that particular time?

A. No, sir; we did not see any unloading on that particular date.

Q. What did you see, then, Mr. Schilt, at that particular time?

A. We saw some eggs that were set aside for reconditioning.

Q. Did you show signs of external damage?

A. Yes.

Q. All of them?

[fol. 717] A. I will put it this way: Most of them.

Q. Now, in the early part of your testimony you seem to make some criticism of the use of the word "graded" by the railroads in their tariffs. Are we to understand that you object to the use of that word?

A. In the manner in which it is used, yes.

Q. Why?

A. Because there is no provision in the 5 percent tolerance rule to the extent that graded eggs are excepted from that particular rule.

Q. You don't object to the use of the term itself, but you object to the fact that they are not excepted?

A. I object to the manner in which they are now applied.

Q. Do you know that the word is one that the shippers wanted us to use?

A. No, I do not know, offhand. I don't recall.

Q. Would that make any difference to you, if the shippers wanted us to use such a word in the tariffs that you think the carriers shouldn't do it?

A. I have no objection to the word in and of itself, but the fact that the 5 percent tolerance rule, that one that has been in existence since 1919, does not contain any provision that would except graded eggs from the application of the 5 percent tolerance—the 5 percent tolerance rule, if you will recall—I think that is section 6 on page 5 of my Exhibit 35—[fol. 718] I would like to qualify my interpretation of it, and then we can both see eye to eye, perhaps:

"In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs." Now, if graded were inserted in there, that would be perfect. But the fact that this new term of "graded" is used, and is not inserted in this particular sentence, then the 5 percent tolerance now applies against graded eggs. That is my objection.

Exam. Mullen: We will take a five-minute recess.

(Short recess.)

Exam. Mullen: Proceed, gentlemen.

By Mr. Zearfaus:

Q. Now, Mr. Schilt, you seemed to be critical of what you contend is the tariff description which does not conform to a commercial description. Is it your contention that tariff descriptions are unlawful or unreasonable if they do not conform with commercial descriptions?

A. That would all depend upon the light in which the terms are used.

Q. How about the present case?

A. In the present case the fact that the term "graded" does not come within the except commercial packs of eggs as shown in section 6 of item 14586-A in the supplement, I cannot reasonably conclude that "graded" is a proper tariff term.

Q. So much for graded. But how about "rehandled" and "repacked"? I think you also criticized that in the tariff.

[fol. 719] A. No, sir; I did not.

Q. In other words, your criticism is directed entirely to the use of the term "graded"; is that right?

A. That is right. Because of the fact that it does not show up in section 6.

Q. Did it show up in the tariff prior to July, 1948, in the manner in which you want it shown?

A. The term "graded"?

Q. Yes.

A. No.

Q. Don't you object to the use of the term "rehandled and repacked at point of origin"?

A. No, sir.

Q. You did not object to that?

A. No, sir.

Q. Very well.

Now, do you think it would be practical for the railroads to examine each crate of eggs at point of origin prior to accepting them for transportation in rail shipments?

A. That would depend largely upon the railroad involved, and whether or not they had the necessary help to do a job of that kind.

Q. Do you think it would be a practical thing, Mr. Schilt,

now, as a transportation specialist for the Department of Agriculture?

[fol. 720] A. No, unless the carriers have reason to believe that they are not getting eggs as so specified on the bill of lading.

Q. Well, if the carriers were to open each crate of eggs at point of origin in order to make such an inspection, do you think that if they do not find any damaged eggs in crates the carriers should charge the shippers for that inspection?

A. No, because if the carriers do it they are doing it for their own protection.

Q. Now, if we take the converse of that situation; if the consignee were to open all of the crates in the car at destination and does not find any damaged eggs, should the carrier be compelled to pay for that examination?

A. You say if the consignee finds no damage?

Q. Yes.

A. If he finds no damage there is no point of having him make an inspection.

Exam. Mullen: The question was whether the railroads should pay for that inspection.

The Witness: Whether the railroads should pay for that inspection; no, sir; they should not.

By Mr. Zearfaus:

Q. You are speaking now of the situation where there is no damage in an entire carload?

A. That is right.

Q. If they examine an entire carload and find only a few crates that have been damaged, is it your contention that [fol. 721] the carrier should pay for the examination of the crates in which no eggs were found to be damaged?

A. That depends upon the extent of the damage to those few crates that were damaged. If they were severely smashed, which would be an indication that the car received some mighty rough treatment in transit, there is the likelihood that the other eggs in the car may be damaged, and there may not be any external evidence of damage other than the few cases you have in mind.

Exam. Mullen: Just a minute. The question still is not answered. The question was: Under those conditions, those that you have mentioned, an entire car is examined, should the railroad pay for the labor of examining those cases which are not damaged?

Wasn't that your question?

By Mr. Zearfaus:

Q. That is the question.

A. If it was a legitimate expense brought about by the handling of the railroads, the carriers should pay for it.

Exam. Mullen: They should pay for it under the reasons you have stated?

The Witness: Yes. If the damages so indicate extremely rough handling in transportation.

By Mr. Zearfaus:

Q. Let us take the situation where the carload shipment of eggs is tendered to the rail carrier for transportation, and the rail carrier, let us say, opens some 20 cases and [fol. 722] finds some damaged eggs in those 20 cases, and then opens the rest of the cases and finds no damage; would you say the rail carrier is justified in charging the shipper the expense it incurred in opening the other cases in addition to the 20?

A. No, sir.

Q. Now, we take the converse of that situation: If 20 cases were damaged at destination, and the consignee finds that to be the fact, do you think that the railroads should be compelled to pay for the cost of reopening all of the other cases in the carload if there is no damage to those cases——

Exam. Mullen: That is the same question asked before.

Mr. Zearfaus: Yes.

The Witness: The answer is "yes."

By Mr. Zearfaus:

Q. You think "yes" in that case?

A. Yes. If the damage was such that it indicated that the car received some rough treatment in transit.

Q. You understand there is no damage except in the 20 cases—

A. It all depends upon the extent of damage or the condition of those 20 cases upon arrival.

Q. Suppose we find one broken egg in each of those cases, would you think, then, that the carrier should be required to pay the opening cost of all of the other crates?

A. Not for one broken egg because you have got to have mass damage in order to determine whether the carrier [fol. 723] was responsible for that damage, or not.

Q. Where do you draw the line, Mr. Schilt?

A. It depends upon the manner in which that damage is found during that joint inspection between the carrier's representative and the consignee's representative.

Q. Give us an illustration of where you think the carrier should pay the cost and an illustration of where the consignee should pay the cost, and tell us exactly where we should draw the line so we would know how to pay a freight claim if it was presented to us.

A. Well, it is a difficult question to answer because it depends largely upon the circumstances and conditions in connection with each individual shipment.

Exam. Mullen: Let us go to this: What is in your mind as indicating external damage caused by the railroads? That was the condition you placed in your answer.

The Witness: That is correct.

Exam. Mullen: If there was obvious evidence of damage caused by the railroads, what would be evidence of such damage?

The Witness: There are various ways in which the rail damage can be determined from what may be considered as normal damage, and I think I clearly explained in that testimony. Rail damage is generally determined by the amount of mass damage that they find within the case, by having—or by finding smashed eggs, we will say as many as, oh, from six to a dozen in either the end of

[fol. 724] the case, or at the center partition where the crushing force created that damage.

But an isolated egg that may be shell damaged here and there throughout the case isn't necessarily considered rail damage.

By Mr. Zearfaus:

Q. Didn't you say there were certain cases within the car where you were most likely to find damaged eggs?

A. Yes. At both ends of the cars, and at the center brace.

Q. If you find damage in those particular places then you know the shipper is justified in opening every case in the car and charging the rail carrier for that expense, even though there may be found no damage in the other crates?

A. That comes back again to the point of the extent of damage that is found. If it is just a couple of dozen eggs found in the few cases that he may inspect, why, the inspectors themselves may feel it is not necessary to go through the entire car. That is largely determined by the joint inspection.

Q. Let's suppose that they do go through the entire car hunting for a few checked eggs.

A. Then it was with the permission of the R.P.I.A. men themselves that there was a likelihood of more damage in the other cases.

Q. Then you are basing your condition on the permission of the R.P.I.A. inspection——

A. That is the point.

Q. Is that what you are basing your condition on?

[fol. 725] A. Yes. If it is determined that the damage is created by the railroads during rail transportation, and it is believed for the protection of the best interest of those concerned that it is necessary to go through the entire car, then the railroads should pay for it.

Q. Suppose that the shipper is the one who thinks it is necessary to be done, and the R.P.I.A. inspector is the one who thinks it isn't necessary——

A. He isn't present with the shipper.

Q. I am talking about the consignee at destination.

A. That is something that can be determined before the lids are opened.

Q. Is there anything under the tariff that says there has to be permission of the R.P.I.A. inspector?

A. Well, that all depends on the——

Q. What does the tariff say? The tariff is there. You are a tariff expert.

A. The tariff states——

Q. Well, let's not read it aloud. Is it there?

A. The consignee's representative cannot make an inspection for condition upon arrival unless the R.P.I.A. man—taking New York for example—is present. Then between the two representatives they determine whether or not the shipment is in good order. They also determine that in instances where damage may be found they will endeavor to determine the responsibility. If it is a carrier [fol. 726] responsibility, why, the consignee, as I understand it, has a right to go ahead and recondition the number of cases, or the entire lot, depending upon the condition of the eggs in the lot looked at.

Q. Are you saying the practice goes beyond the tariff?

A. The practice is stated in the tariff. It is stated as a privilege, I believe.

I think in the current tariff you will find that it states that upon arrival at destination——

Exam. Mullen: What section of the tariff?

The Witness: Section 2, Mr. Examiner. I have it shown on page 4 of my exhibit under column 2, beginning with line No. 2. On line 4, it states: "The consignee, or his authorized representative, shall have the privilege, before eggs leave the possession of the carrier, and under the supervision of carrier's representative, of lifting the lids of 20 cases in any carload."

Mr. Matson: Now, Mr. Schilt, you are reading from Exhibit 35?

The Witness: Yes, page 4, under column 2, beginning with lines 2 to 7.

By Mr. Zearfaus:

Q. I think you made some comment with respect to former section 2 of the tariff which provides for top layer inspection of 20 cases. If they disclose damage there is the right to examine all the cases?

[fol. 727] Exam. Mullen: Is that the same section the witness referred to?

Mr. Reilly: No, sir; that is at page 9 of his mimeographed statement, Mr. Examiner.

Exam. Mullen: I just want to get it clear in the record that you are speaking of the same section of the tariff.

Off the record.

(Discussion off the record.)

Exam. Mullen: All right, proceed.

By Mr. Zearfaus:

Q. You say in your testimony: "Too literal a translation of these conditions or privileges have been stated, and I seriously doubt the necessity for changing what we believe to be the reasonable terms in column 1 to those shown under column 2."

Is it your contention that too literal a translation of the former section has been stated when we say they are entitled to an inspection of all the cases if they find one damaged egg?

A. Then that is the literal translation I refer to. I think if a shipment arrived with only one damaged egg, all consignees would thank their lucky stars they were using rail transportation.

Q. Would you say under the law and the tariff that the consignee would not have that privilege under the old section 2?

A. It all depends on what we are talking about. The literal translation——

[fol. 728] Exam. Mullen: It is clear enough, Mr. Schilt. He is talking about what interpretation you place on section 2 as shown on your page 5, column 1. Now, look at that.

As I understand it, that is the present section now in effect.

The Witness: Under column 1? That is the prior rule. The current rules are shown under column 2.

Mr. Reilly: Counsel is talking about section 2 under column 1 on page 4, and basically the question is the same whether you talk about column 1 or column 2.

Exam. Mullen: What is the question?

(Question read.)

Exam. Mullen: That is referring to whether he only found one broken egg.

Do you understand the question?

The Witness: I think I do.

Exam. Mullen: Can you answer it?

The Witness: The fact that the term "damaged" isn't defined——

Mr. Reilly: Mr. Examiner——

Exam. Mullen: Just a minute.

Go ahead, Mr. Schilt.

The Witness: The interpretation placed upon the term "damaged" is that if one egg is cracked it is damaged, and with that consideration given to the reason why the [fol. 729] prior rules were unreasonable——

Exam. Mullen: Just a moment, please.

Now, under those circumstances would he have the privilege of demanding this examination?

The Witness: Oh, I think he would have the privilege, but——

Exam. Mullen: Just a minute. Stick to the question.

The Witness: I doubt he would exercise——

Mr. Reilly: I move the balance of the answer be stricken, Mr. Examiner.

Exam. Mullen: Sustained.

Please don't argue and we will get ahead much faster.

By Mr. Zearfaus:

Q. With that privilege there, you say you seriously doubt the necessity for changing the rule. Do you see any reason why the carrier may not change that rule so it may not be given what you term a too literal translation of it?

A. I don't quite understand that.

Exam. Mullen: The question is: If that tariff now gives such a privilege, do you think the carriers should change it?

Mr. McDonald: Mr. Examiner, I don't think that is quite accurately stated.

By Mr Zearfaus:

Q. With the privilege you say the consignees have under the old tariff, section 2, do you contend the carriers should not be permitted to make a change which would prevent what you term the too literal translation of that provision?

[fol. 730] A. The answer to that question is that I don't think it was necessary to change the old provisions to the new provisions.

Q. You do not think that because the consignees are given the privilege of giving a too literal translation that the railroads should not be permitted to make a change?

A. I think we are at odd ends here——

Q. I don't think so.

A. I am referring to the translation placed upon the provision by the carrier representatives, not the shippers or consignee representatives.

Mr. McDonald: I submit that is awfully evasive argument on the part of the witness.

Exam. Mullen: Just a minute. The attorney is now asking the questions. Let's see if he has any objection.

Mr. Zearfaus: It is not responsive at all, Mr. Examiner. I certainly object. The witness can answer that question.

Exam. Mullen: The question in my mind is that it is rather confusing. Can you make it more direct?

Mr. Zearfaus: This witness has testified on direct examination that under the old tariff, section 2, there was what he terms a too literal translation——

Exam. Mullen: At that point, do you mean the too literal application under actual conditions?

Mr. Zearfaus: I don't know whether he means too literal an application or too literal a possibility. Either one, what [fol. 731] difference does it make?

Now, assuming that to be true, does he still want to take the position that there is no need to change that section 2, and that we are not justified in making a change in it in order to prevent what he terms a too literal translation? I think that is very clear now.

Exam. Mullen: Do you understand it, Mr. Witness?

The Witness: I think I understand it in part, Mr. Examiner——.

Exam. Mullen: What is it you don't understand?

The Witness: There seems to be a different interpretation placed on my direct testimony.

Exam. Mullen: Let's stop arguing your defense here and let's get down to direct facts.

Will you direct your question to the actual statement of this witness on direct examination, Mr. Zearfaus?

Mr. Zearfaus: I don't have the transcript of the direct testimony, Mr. Examiner, but we do have a mimeographed copy of the witness' direct testimony.

Exam. Mullen: We have the transcript here in the docket.

Off the record for a minute.

(Discussion off the record.)

Exam. Mullen: On the record.

Now, here is the official record. Make reference to the page number and specific statement so that we will know what we are talking about.

[fol. 732] By Mr. Zearfaus:

Q. Mr. Schilt, commencing at page 497 of the record, you made the following statement:

"Page 4 of Exhibit No. 35 shows the condition, or, rather, the privilege under which an examination may be made by consignees under the supervision of carriers' representatives to ascertain if any railroad damage is in the shipment upon its arrival at destination. Thus far on the record too literal a translation of these conditions or privileges has been stated, and I seriously doubt the necessity for changing what we believe to be the reasonable terms in column 1 to those shown under column 2 unless, for clarification and consistency, one of the provisions now contained in section 7 on page 5 of this exhibit is included in the prior rules. This provision will be discussed in detail later."

Now, what did you mean by that, Mr. Schilt?

A. What I meant was that thus far on the record too literal a translation of these conditions has been stated by carrier witnesses.

Q. You conceded this morning that the possibility of the too literal a translation of these conditions or privileges of the tariff exists.

A. Oh, yes.

Q. Do you see any reason, then, why the carriers should not make appropriate tariff changes to remedy those too literal possibilities of translation that you mention?

[fol. 733] A. I do not see the necessity for it. Now, that is my opinion. Because these rules were in existence for quite a number of years and we didn't have the trouble then, or in the earlier years, that we are having now.

The reason, as I understand it, for the desire for the change is that under the old rules the shipper could have that privilege but no one has yet shown any evidence of the extent that that practice is prevalent up in the New York area.

Q. So even if there is a possibility of doing so, you think it is unreasonable for the carriers to plug up any holes in the tariffs that exist? Is that right?

A. To the best of my knowledge, the carriers are the only ones that think that is a hole and should be plugged up. It worked very satisfactorily for years.

Q. Suppose it is working unsatisfactorily at the present time; can you see any reason why it should not be remedied?

A. If it was unsatisfactory, or if it is found to be unsatisfactory, then it perhaps should be remedied. How, I don't know. The carriers are still responsible for damage.

Q. Now, you speak, at page 498 of the record, of the methods by which damage is ascertained. That is at page 10 of your mimeographed statement.

A. Beginning with what words, sir?

Q. "There are many kinds of damage that may exist in cases of eggs," and so forth. You go on and give a number [fol. 734] of conditions and then you end up with the conclusion: "One does not have to be claim conscious nor have any special skill or intuition to detect the damage within these particular cases."

Is that the way the claim damage is ascertained today?

A. To the best of my knowledge, yes.

Q. Is it based entirely, then, upon the external appearance of the crates; is that right?

A. External and internal.

Q. Where did you mention in that particular narrative that it is detected by internal evidence of damage?

A. The indication of the damage that is external, and I think I mentioned the leaking of albumen or yolks in the cases either through the slats in a wooden case or through the hand holes in a fibre case. We will have a couple of cases that may show external evidence of damage, and in order to determine whether or not the damage goes beyond the external evidence of damage other cases will be opened in the course of the examination.

Q. That, of course, goes beyond what you have mentioned here at page 498 of the record. In other words, as I understand it, those words you use at that page confine the examination to external evidence, but now you say it goes beyond that, and you go deeper; is that right?

A. I am a little confused, Mr. Zearfaus. I can't quite follow your question.

Mr. Zearfaus: Would you read the question?

[fol. 735] (Question read.)

The Witness: That would depend upon the situation that exists at the time the car is inspected.

Exam. Mullen: As I understand it, at this part of his testimony he was talking of only external damage.

The Witness: That is correct, sir.

By Mr. Zearfaus:

Q. Suppose you have only one damaged case, Mr. Schilt. Do you think the whole shipment should be examined?

A. Not for one damaged case.

Q. No. How many cases would you have to have? Two?

A. That goes back to the point again, Mr. Zearfaus, it depends upon the condition of the load upon arrival, and the manner in which those cases are smashed. If all indications led one to believe that the car had received rough treatment in transit, then I think it is necessary for the owner of the eggs to protect himself.

Q. At what point——

Exam. Mullen: Just a minute. That is not clear. Do you mean by "protect themselves," to then demand an examination of the entire car?

That is the question. Suppose you found one case completely smashed. Under those conditions should the shipper then have the right to examine the entire car and have the railroads pay for that examination?

The Witness: I do not think so.

[fol. 736] Mr. Zearfaus: We asked that question before, Mr. Examiner, and then we asked him how many had to be damaged in order to have the examination of the entire car.

The Witness: I am afraid I can't answer that. I don't know.

By Mr. Zearfaus:

Q. At what point do you have to become claim conscious, as you term it——

Exam. Mullen: I don't think he has to answer that question.

Mr. Zearfaus: All right, Mr. Examiner.

By Mr. Zearfaus:

Q. You mentioned somewhere around page 499 or page 500 that very little attention is paid, if anything, to a few checked eggs if this damage is not concentrated to any particular part of the case. How do you know?

A. Because I myself have made inspections and have not regarded insignificant shell damage as sufficient reason for rehandling or repacking, or recasing, as the case may be.

Q. What you have done, you think, then, is binding on every other consignee that receives shipments of eggs?

A. I have observed in my many visits to New York City where I have watched the men rehandle and repack eggs, that in the course of—not rehandle and repack eggs, but in the course of making an examination for condition upon arrival, what they are primarily interested in is finding mass damage if any exists in the case. And mass damage is generally believed to be caused by rail transportation.

Q. Do you have any objection to a tariff rule that limits [fol. 737] the responsibility to mass damage?

A. That is a pretty difficult question to answer.

Commr. Mitchell: He is just asking for your views.

Mr. Matson: Perhaps for clarification you should explain what you mean by mass damage.

Commr. Mitchell: I thought the witness had just explained it.

Mr. Zearfaus: I am using it in the same sense the witness used it, Mr. Commissioner.

Mr. Matson: Well, I was asking him to explain what he meant by it.

The Witness: Well, there is a dozen eggs broken at one end of the case where eggs are generally found broken after a car is subjected to a severe impact en route, and I think I distinguished in my testimony the difference between mass damage and what may be considered as normal damage, normal damage being an isolated broken egg here and there within the case.

By Mr. Zearfaus:

Q. What would be the attitude of the Department of Agriculture if we would have a rule which would attempt to require the consignees to overlook checked or cracked eggs in the ascertainment of damage?

A. I would look upon that as a needless waste of time, because that is the present practice.

Q. Then is it your contention if it isn't the practice it should be stopped?

[fol. 738] A. I don't get that.

Q. You said it is not the practice presently, didn't you?

Mr. Matson: He said it is.

The Witness: The practice presently is to overlook damage where the damage is isolated throughout the case.

By Mr. Zearfaus:

Q. Now, if they don't overlook it do you think that practice should be stopped?

A. That is, if they don't overlook it—it should be stopped.

Commr. Mitchell: When you say it is the practice, are you referring to New York City?

The Witness: Yes, sir. New York City and anywhere else where that practice may prevail. But I do not feel I can draw a line of demarcation as to the number of eggs. It would depend upon the location in the case where the damage eggs are found, and to the extent that more than one is found in the identical location.

Mr. Reilly: Mr. Schult——

Exam. Mullen: Just a minute.

Are you finished, Mr. Zearfaus?

Mr. Zearfaus: Oh, no, sir.

Exam. Mullen: All right, let Mr. Zearfaus finish.

By Mr. Zearfaus:

Q. You mentioned at page 498 of the record: "Common knowledge gained through experience, and further borne out by Government tests, almost makes it a requisite for anyone inspecting a car of eggs for its condition upon ar- [fol. 739] rival to lift the lids of the cases of eggs located in the top and bottom rows at each end of the car."

You say "gained through experience." Now, what experience have you had?

A. We have found—when I say "we" I am referring back to the days when I was directly located in the egg business—we found that if a car contained damage it would be at the ends of the cars or at the center.

In my personal participation in Government tests I found the same thing, in later years. And the reports I think that were put out by the Department of Agriculture indicate that the greatest volume of damage, if any, existing in a shipment will be found at both ends and at the center of the car.

Q. If you found it elsewhere, what would it indicate to you—anything?

A. It wouldn't indicate anything to me unless there was damage at either end, or at the center.

Commr. Mitchell: Do you have any explanation as to why the damage would be at either end or at the center?

The Witness: It indicates to me that that car received a severe impact en route, which caused the load to shift

forward, and since the ends of the car are stationary something has to give, and if the wall won't give when that impact of force is created, well, the next thing is the case surrounding the eggs, and if that doesn't give the eggs will give themselves.

[fol. 740] Commr. Mitchell: What about the center of the cars?

The Witness: Normally, the cars are braced at the center, and with the shunting back and forth, why, perhaps after a few light shocks, one which would shift perhaps half a load, then with the heavy shock coming in the opposite direction, why, you have perhaps the maximum strength of the impact force dissipated around the center of the car.

By Mr. Zearfaus:

Q. Have you seen cars which were actually braced in the center?

A. Yes.

Q. Where?

A. Our own cars back in my earlier days, and cars——

Q. What year would you say?

A. 1928 through to 1938.

Q. That would be where?

A. In New York City. And, also, the cars that I participated in the Government examination at origins and/or at destination.

Q. Do you know what the situation is today—the difference between 1928-1938 and 1949? Do you know what the difference is today?

A. When I say "today," I am referring to approximately 1948, which was the last time I participated in the Government tests—that is, the Department of Agriculture tests.

Q. In May, 1948, at New York City you saw cars which were braced in the center?

[fol. 741] A. Yes, sir.

Q. Did you see any which were not braced?

A. Yes, I think I saw one car. The spacing in the car so permitted—or did not permit for any bracing of any kind. The cases were used to fill up the entire length of the car.

Q. Do you know what the general practice is today, Mr. Schilt, as to bracing?

A. You are covering a lot of territory by asking what the general practice is——

Commr. Mitchell: All you have to do, Mr. Schilt, is say "no" if you don't know.

The Witness: All right. I am afraid I will have to say "no," I do not know what the general practice is.

By Mr. Zearfaus:

Q. Now, at page 491 of the record you referred to leaker damage. It is page 11 of your mimeographed summary.

Isn't it possible for leaker damage to occur due to the method in which a shipper will load the car by tossing crates into the car?

A. Any kind of damage will result if crates of eggs or cases of eggs are tossed around.

Q. Well, isn't it possible, then, that even after a shipment may have been rehandled or repacked at the origin that before it is tendered to the carrier for transportation while the shipper is loading that breakage might occur? [fol. 742] A. It might occur, depending upon the handling that the particular case receives.

Q. Now, isn't it possible, too, that cracked eggs and checked eggs might result from the character of the egg shell?

A. It might result—cracked and checked eggs might result by reason of the deficiency of certain ingredients in the shell structure.

Q. Isn't that an ordinary possibility?

A. Yes.

Q. And the breaking of those eggs was more likely to happen than those others which have stronger shells, and which have all the chemical properties in the shell?

A. It would all depend upon the manner in which the particular eggs were handled.

Q. Now, storage packed eggs, are they oiled in any way?

A. Some are, and some are not.

Q. And if the oil is not entirely removed from the shell, is there any possibility that that will seep down into the slats and weaken them, and the fillers?

A. It might, if the oil is not thoroughly removed.

Q. Now, are those eggs put into the crates by machine, into the fillers?

A. There are various ways in which eggs are packed, and——

Commr. Mitchell: He asked you, Mr. Schilt, a simple question. Are those eggs put into the fillers by machine? Do you know?

[fol. 743] The Witness: I don't know.

By Mr. Zearfaus:

Q. You don't know whether storage eggs are put into the fillers by machine?

A. I do not know. That would depend largely upon the practices of the plant handling the eggs. Some may have machines, and——

Commr. Mitchell: You have already answered the question.

By Mr. Zearfaus:

Q. You say at page 499 of the record: "It is not practical for any packer of eggs to place a leaker in a case because it would only ruin the packing material and detract from the salability of the case of eggs."

Now, if eggs should be loaded or put into fillers by machine, and that were speeded up to such an extent that it might crack the shell, the shipper wouldn't be able to know that, would he?

A. Oh, I think so.

Exam. Mullen: Do you know anything about egg packing machinery?

The Witness: No, I will have to answer that question: I don't know.

By Mr. Zearfaus:

Q. Now, you refer also to abnormal rough treatment. What do you mean by that?

A. Well, there is bound to be—could you direct my attention to the part of my testimony where I said that?

Mr. McDonald: Page 498, right after the one we talked about a minute ago where you said one does not have to be [fol. 744] claim conscious. That is on page 10 of the mimeographed summary.

It is also mentioned at the middle of page 12 of the summary.

The Witness: Your question?

By Mr. Zearfaus:

Q. What do you mean by abnormal rough treatment?

A. I would classify that as a car that shows a broken brace at the center, which would indicate that the car received one or more severe shocks in transit sufficient to cause the brace to collapse while en route.

Q. Then, if there were no broken braces you would say it was normal treatment?

A. It would depend upon whether or not there was a shift of load in the car. If measurements were taken at origin, and also at destination, to see whether or not the load shifted, you wouldn't necessarily have to find a broken brace.

Q. If you found no shift, you would say it was normal treatment?

A. That is right.

Q. You spoke about the normal damage, on the other hand—at about that same place in your testimony. What is normal damage.

A. I explain that normal damage is shell damaged eggs which inadvertently were placed in the cases and were not confined to one part or place in the case—an isolated cracked [fol. 745] or checked egg may be in the top, middle, or bottom layer, and may be found on either side of the case. In other words, it wouldn't be concentrated in any particular section, and that is what I call normal damage.

Q. Now, you don't consider anything else normal damage of eggs?

A. No.

Q. Only as you restricted it here?

A. That is correct, sir.

By Mr. Reilly:

Q. Mr. Schilt, at page 10 of your prepared statement you say: "In lifting the lids of the 20-case sample, very little, if any, attention is paid to a few checked or cracked eggs

that may be noted, if this particular kind of shell damage is not concentrated in any particular part of the case."

That is at page 499 of the record.

Are you talking about your own experience, Mr. Schilt?

A. Talking about my own experience, and the observations I made at various times in the past 21 years.

Q. Well, let's take the past year.

A. Not during the past year.

Q. Let's take 1948. Were you present when any inspections of eggs were made at the New York piers in 1948?

A. I was present at the Merchants Refrigerating Company at 17th Street and Tenth Avenue in New York City for one whole week, during which time we had I think two or [fol. 746] three—three experimental cars arrive, and I was one of the inspectors who participated in the examination, and in looking at it from a commercial point of view I didn't consider some of the shipment damaged, but we had to carefully candle all eggs in the sample cases and make specific records of the amount of damage found.

Q. They were test shipments, were they not?

A. They were test shipments.

Q. They weren't ordinary shipments that come into the New York piers.

A. The only—I would say they were handled no differently than any other shipment.

Q. Well, let me put my question this way, Mr. Schilt: Do you know of your own knowledge whether or not a New York consignee at a pier of the Lackawanna Railroad, or the Erie Railroad, or the New York Central Railroad—that the railroad pays any attention to checked and cracked eggs?

A. To the best of my knowledge, they do not, and I think that was actually stated on the record——

Exam. Mullen: Do you know from your own knowledge?

The Witness: During other inspections I have seen an isolated cracked or checked egg pass by as a good case, during an inspection upon arrival.

Commr. Mitchell: Was that in New York in 1948?

The Witness: In 19—wait a minute. That was in 1948 out at the Swift & Company plant in Garden City—no, in Mine-

[fol. 747] ola, Long Island, where the extent of damage wasn't considered severe enough for claims purposes.

But as for the piers, this year, I think it was in September of this year——

Mr. Matson: 1949?

The Witness: Excuse me, September of 1949, I happened to be on the pier where the consignee's representative was going through a shipment that arrived that morning. The shipment was reported in bad order, and we went down to see it, and at the same time the consignee's representative was trying to select some good order cases to take care of the consignee's immediate needs, and we did a—I observed that no attention was paid to an isolated cracked egg found in the top layer.

Commr. Mitchell: You don't want to say from the little experience you have had that that is the general custom, do you?

The Witness: In inquiring around, sir—if the information as impart to me is considered as general knowledge.

Commr. Mitchell: Well, you must testify from your own knowledge. You are not in a position, are you, to say that is the general custom, or not?

The Witness: I cannot. I can only say that I believe it to be the general practice.

Commr. Mitchell: Well, we would like to have information based on knowledge rather than belief.

By Mr. Reilly:

Q. On page 11 of your prepared statement, Mr. [fol. 748] Schilt, you say "Checked or cracked eggs are not purposely packed in a case unless they are intended to be shipped as such and are so specified on the bill of lading." That appears at page 500 of the official record.

Are you speaking there about eggs that are prepared for shipment by the Department of Agriculture, and——

A. No, sir.

Q. —and speaking of your own knowledge?

A. No, sir. But there is a market for checked or cracked eggs, and checked or cracked eggs are shipped as such and so specified on the bill of lading.

Q. I understand that, Mr. Schilt. What I am asking you

is: How do you know that some shipper out in Illinois or Minnesota or Wisconsin does not put a checked or cracked egg in a case? You don't know that of your own knowledge, do you?

A. I am afraid I will have to answer I don't *know* that of my own knowledge.

Q. Likewise, when you state at page 11 "Eggs that are smashed and leaking ruin the flats and fillers and stain the inside of the case, consequently requiring the case to be reconditioned and put in salable order." Do you know of your own knowledge whether or not every time there are one or two cracked or smashed eggs in the case the consignee always reconditions that case and does not sell it as is?

A. When you put it to me in that light, I am afraid I have [fol. 749] to say I don't know.

Q. Thank you.

A. That would depend entirely, or largely, upon the individual.

Q. You answered my question. Thank you.

At page 12 of your prepared statement, the first full paragraph, you say:

"During these examinations transit breakage can easily be distinguished from normal breakage because it will be found confined to more than one egg in the rows at the end of the cases, or in the rows adjacent to the center partition of the case."

That is at page 500 of the transcript.

Now, assume, Mr. Schilt, that eggs are transported 150 miles by truck to the rail point of origin, and there without being rehandled or repacked those eggs are loaded into the rail car for transportation, are transported to New York, and upon arrival of the eggs at New York a 20-case inspection is made, and you find damage in those cases.

Can you tell whether or not that damage was caused during truck transportation or rail transportation?

A. That would depend upon the condition at the time of inspection at the——

Commr. Mitchell: Can you answer the question? Read the question. It is a direct question.

The Witness: If we can distinguish—determine whether [fol. 750] it was rail breakage, or not?

By Mr. Reilly:

Q. How can you distinguish whether an egg was broken during rail transportation or truck transportation, that is what I would like to know.

A. I think I state in the record how some rail transportation breakage is found.

Q. Let's put it this way: Let's assume you have a truck that takes 400 cases of eggs from Minnesota 150 miles to the rail head. During that truck transportation the eggs are subjected to a horizontal shock so that the flats and fillers are bent in, as you described on page 12; those same eggs are not rehandled and repacked, but are put in the rail cars for rail transportation; they arrive in New York and are inspected and found to be damaged.

Can you tell whether or not the damage occurred in the truck transportation or rail transportation if you just look at those cases of eggs?

A. The particular type of damage you mention would show a considerable drying out of the eggs themselves, the broken eggs, and it may be determined that in connection with your hypothetical question it was truck damage.

Q. Can you tell?

A. I think I could, if I saw such a shipment.

Q. Assuming the entire shipment consumed three days in transit, could you tell—including truck haul?

[fol. 751] A. Including the truck haul?

Q. Yes. Let's say from Minnesota into Chicago by truck from some spot in Minnesota to a rail point, and from there to Chicago, total time in transit three days. Can you tell?

Mr. Matson: Is that a practical situation, Mr. Reilly?

Mr. Reilly: I am asking a hypothetical question, Mr. Matson.

Commr. Mitchell: I think it is very material to know whether he can tell, or anyone else can tell, whether the damage is caused by the truck or the rails.

Mr. Matson: I was wondering about this three-day shipment.

Commr. Mitchell: I don't care so much about that, but I am interested in this: Do you think it is possible to tell whether the damage is caused on the haul by the truck or by the rails, where they are not rehandled or repacked at rail origin?

The Witness: I think it is possible to determine up to a certain extent. It would all depend upon the condition of the particular shipment upon arrival—whether it was an indication of old or fresh breakage.

If the egg would thoroughly adhere to the flap in the filler, and was lacking in moisture content, it would indicate that it was old.

Exam. Mullen: Old egg or old breakage?

The Witness: Old breakage.

Commr. Mitchell: How long would it take after the breakage for it to adhere to the flap or the filler?

[fol. 752] The Witness: That is also another difficult question to answer because it depends upon the circumstances and conditions surrounding the individual shipment. The more moisture content in the car, or truck, enters into the picture, and keeping the egg from drying out as rapidly as one that may be shipped under a different set of conditions.

Commr. Mitchell: Do you think the ordinary person could tell whether it was broken by the truck or by the rail transportation?

The Witness: Well, that may be possible. I don't know. I was never called upon to try and determine a situation that ties in with the hypothetical movement——

Commr. Mitchell: This is one of the important things we have to decide here, isn't it?

The Witness: It is.

Commr. Mitchell: The question in my mind is whether or not you can haul eggs by truck for 150 or 200 miles and then put them on a railroad car and then say all the damage was caused in the transportation by rail, or that the truck broke some of those eggs.

The Witness: It is possible, in the absence of an inspection at the rail point of origin, that the damage was created by truck, but I don't——

Commr. Mitchell: That is the reason claimed why we should have the rule we have under investigation here, and [fol. 753] isn't that the question we have got to try to decide? In view of the difficulty, if you want to put it that way, of telling whether the breakage was by the truck or by the train, is it fair to have a rule that would require them to repack and rehandle so that we would know where the breakage occurred?

The Witness: Well, that is a matter that largely depends on the rail carrier at the rail point of origin. And in the absence of facts to the contrary, we would have nothing to prove that the damage was not created by the rails during its particular portion of the haul.

Commr. Mitchell: Then you assume that the eggs are in good shape when they arrive at the rail head in order to reach that conclusion, don't you?

The Witness: Yes.

Commr. Mitchell: Why do you assume that?

The Witness: In the absence of facts to the contrary, I cannot draw any other conclusion.

Commr. Mitchell: Who should establish those facts?

The Witness: The rail inspection at the point of origin, where the rails assume responsibility for the shipment.

Commr. Mitchell: You would place responsibility upon the carrier to inspect and ascertain whether or not the eggs were in good condition when they accept them?

The Witness: The carriers being their own insurers, I should think they would be very anxious to protect their [fol. 754] interests.

Commr. Mitchell: They say they are, and that the fair way to do it is to put in a 5 percent tolerance rule, unless repacked and rehandled at rail origin.

The Witness: That 5 percent tolerance wasn't established on the basis of facts of the carriers, as far as I know.

Commr. Mitchell: Now we are trying to get the facts. That is what we have this hearing fo These eggs are transported by truck, and you say the duty ought to be upon the carrier to inspect the eggs *are* the rail point of origin in order to know whether they are in good condition or not. In other words, the shipper has no responsibility when he delivers these eggs to the carrier?

The Witness: It is the shipper's responsibility to deliver good eggs. But if an inspection isn't made by the carrier upon receipt of those eggs, and he, in turn, or his agent, in turn, surrenders a good order receipt, then that is the only thing left to guide anyone as to that damage.

Commr. Mitchell: Should the shipper pay an inspection charge there?

The Witness: If the inspection is made by the carrier?

Commr. Mitchell: Yes.

The Witness: I don't think the shipper should be called upon to do that. That is up to the carrier to protect himself, and if the carrier so elects to inspect a shipment, the [fol. 755] carrier should assume that cost, if any.

Commr. Mitchell: Well, then, that cost should be taken into consideration because it has to be paid by somebody—that cost should be taken into consideration in the establishment of the rate for the shipment of the eggs by the rails, shouldn't it?

The Witness: To the best of my knowledge, it is one of the factors taken into consideration in the construction of a rate.

Commr. Mitchell: Then you feel there should be an added rate that would have to be fixed so the railroads would have the money to pay this inspection charge—would you add that only to eggs that are trucked in and received——

The Witness: I am afraid I can't answer that question, Mr. Commissioner.

Commr. Mitchell: This is the very question we have before us.

The Witness: I do not know how the particular rates were made up in the first instance to see whether or not any consideration was given to the requirements for transporting eggs from any particular point to any destination.

Commr. Mitchell: You see, when you add this extra cost to these eggs that are trucked in, then the shippers who don't truck them in—some of these big shippers—have got to pay an excessive freight rate. Because you will have to admit, won't you, that there is some damage to eggs trucked—or there is a possibility?

[fol. 756] The Witness: There is a possibility of damage.

Commr. Mitchell: But you would place the responsibility

upon the railroads to ascertain that the eggs were in good order when received by them at the point of origin?

The Witness: Yes, I would.

Commr. Mitchell: What do you think is unfair about this tolerance rule?

The Witness: The tolerance rule may not be in accord with facts in all instances. It is arbitrarily applied against all shipments moving under those circumstances and conditions. Going beyond that, the examinations, the reconditioning procedure which I have observed, particularly at New York City, cannot possibly produce all of the damage that may exist in the case, and I think that was borne out by Witness Winters' exhibits which involved some reconditioned shipments wherein damage similar to what may be found at origin still remained in the case after the rail losses had been determined.

Commr. Mitchell: I don't quite follow you on that. I am asking you now what is unfair about this tolerance rule.

The Witness: First, it has not been determined that eggs trucked into a rail point of origin sustained 5 percent damage at that particular point.

Commr. Mitchell: That is the question we have now got under discussion here. But, as I understand you, you would not allow any tolerance; you would place the re- [fol. 757] sponsibility upon the railroads when they accepted them to know they were in 100 percent good condition?

The Witness: Yes.

Commr. Mitchell: That is what you want. Now, I am asking you, let's suppose we arrive at the right amount of tolerance—and I am not saying what that is, if any—but let's say we arrive at a certain amount. What is unfair about that?

The Witness: My thinking along those lines is largely controlled by section 20, paragraph 11, of the Act, which does not permit the carriers to limit their liability in any manner, way, shape, or form whatsoever, as it states, and the establishment of a tolerance rule is an establishment of a limitation of liability, which is just damage in excess of any tolerance that may be adopted.

Commr. Mitchell: If this Commission finds that this is

a fair and reasonable tolerance after a hearing, and I think most of us will agree we have had some hearings so far, and we can't even see the end yet—wouldn't they be bound by that finding?

Mr. Matson: May I ask, Mr. Commissioner, if the finding you are suggesting, that when the eggs are delivered to the rail carriers at the origin point that there has been damage caused by truck?

Commr. Mitchell: That is right.

Mr. Matson: And you are asking the witness whether the railroads should pay for that damage?

[fol. 758] Commr. Mitchell: Well, maybe I should not ask him that question.

However, I just wanted to get your view, Mr. Schilt, on this. You feel, and you testified, that the railroads ought to accept full liability by the receipt for those eggs?

The Witness: Yes. In the absence of anything to the contrary—that is, in the absence of an inspection at origin. If they sign a receipt for any particular shipment.

Commr. Mitchell: Well, let's say this record showed there was breakage of eggs by truck haul, and that a 5 percent tolerance was a fair and reasonable amount. Would you then say we should not put in a tolerance rule?

The Witness: Five percent is a mighty large tolerance.

Commr. Mitchell: I am saying, assume we do. I am not saying that we do; I just say assume that we do.

The Witness: My thinking is largely controlled by the wording of the section——

Commr. Mitchell: I just said, assuming that these things are true——

The Witness: I do not see that the carriers could reasonably establish a limitation of liability——

Commr. Mitchell: I am asking you to assume that they do establish it. All I want to ask you is: Regardless of what the facts are, you do not believe a tolerance ought to be allowed?

[fol. 759] The Witness: Under the present laws, as I understand them, that is right.

Commr. Mitchell: All right. I guess I understand your position.

Mr. Reilly: May I ask one question in that connection, Mr. Commissioner?

Commr. Mitchell: Certainly.

By Mr. Reilly:

Q. Mr. Schilt, how do you uphold the tolerances the carriers are allowed to apply on shipments of grain, which have been sustained by the Commission and never successfully attacked in the courts?

Mr. Matson: Do you know anything about grain?

The Witness: No, I do not. I am afraid I cannot answer your question. I haven't sufficient knowledge of it.

Commr. Mitchell: Well, gentlemen, this is a good time to adjourn for lunch.

Before we adjourn, I would like to ask, are the railroads going to be able to bring up to date at this hearing the data as to New York?

Mr. Knowlton: I think we have done it. We haven't——

Commr. Mitchell: Does anybody keep track of the amount of claims that the railroads pay? Haven't you got that for December? Are we up to December?

Mr. Knowlton: We have the damage, but we can't put it against revenues. You see, the damage claims are not [fol. 760] handled on a concurrent basis. We pay the claims and put it in suspense——

Commr. Mitchell: I think it is the responsibility of the railroads here to show this Commission that they are accomplishing something by this tolerance rule, and the complete failure to supply all the data is not, to my judgment, the best way for the railroads to complete that showing.

Mr. Knowlton: We have held public hearings and made considerable progress.

Commr. Mitchell: You mean to tell me now, you don't know how much you have paid in the month of December for eggs?

Mr. McDonald: I wonder if this is pertinent, Mr. Commissioner: I don't think you would have a fair picture—this goes to a point that was made previously, namely, that

claims for December can be filed much later, and if we did show you what was actually paid——

Commr. Mitchell: We would be interested in knowing what you actually paid, and I know that is available, and that ought to be brought up to date.

Mr. McDonald: I am sure we can show you that, Mr. Commissioner.

Commr. Mitchell: That is the duty of the railroads to do so.

Mr. Reilly: We can furnish the amount of claims that were paid in December, Mr. Commissioner, but they will not bear any relationship to the eggs transported in December.

[fol. 761] Commr. Mitchell: I understand that perfectly, but I want to know how much claims you are paying out down there. This witness testified to the percentages for the year 1948—wasn't that right?

Mr. Hodgkinson: That was for 1947.

Commr. Mitchell: Have you any figures for 1948?

Mr. Hodgkinson: Yes, sir; we can give you the claim balance for 1948 and 1949. We would be glad to furnish that to you within ten days.

Commr. Mitchell: I think there is a great responsibility here upon the railroads in this matter. To my way of thinking, it is a very serious one. Here are railroads that from this record are paying out 50 percent of the total amount received for the transportation of eggs. Now, that cannot go on.

Mr. Knowlton: We have said that that can't go on.

Commr. Mitchell: Then I want to know what progress you are making.

Mr. Knowlton: I started to tell you, Mr. Commissioner, since the last hearing we have prepared a tariff, we have gone through the orderly proceeding of public docketing, and we believe the tariff will correct the situation to a great extent except as to occasional rough handling, and we don't believe we can make progress in reducing the claims materially until that tariff is in effect. We have explained the reasons why.

Commr. Mitchell: You said when this 5 percent tolerance [fol. 762] was put into effect that would be of great benefit to you.

Mr. Knowlton: We have shown how that has affected the few shipments that come within that category, but the great bulk of the shipments do not come within that category, and, as yet, we have not succeeded in getting a tolerance in regard to the great bulk of the shipments. Until that is done we cannot expect to——

Commr. Mitchell: It seems to me you should be showing how this is affecting the situation in New York and not coming in with a new tolerance rule.

Mr. Knowlton: We have got to correct the thing in regard to the great bulk of shipments before we can come in and show we are making progress.

Commr. Mitchell: When did you find that out?

Mr. Knowlton: During the series of these investigations.

Commr. Mitchell: Tie it down to a date or a year.

Mr. Knowlton: It wasn't tied *it* down to a date——

Commr. Mitchell: Did you know it in 1948?

Mr. Knowlton: We believe that the 5 percent would go a long way, but experience hasn't shown that it has.

Commr. Mitchell: Did you know it in 1949?

Mr. Knowlton: In 1949 some of us came to that conclusion; not all of us.

Commr. Mitchell: Well, I would like to have the railroads present what evidence they have got here, and I think they ought to come forward with everything they have got with [fol. 763] regard to the claims they are paying in New York.

Mr. Knowlton: We will be glad to do that, Mr. Commissioner, but that doesn't solve our problem. It states our problem.

Commr. Mitchell: It will give me information that will help in solving the problem.

Mr. Knowlton: Then we would welcome it.

Commr. Mitchell: I want to say that I am very dissatisfied with the way this matter has been handled by the railroads, and on this very record it shows mismanagement in handling by the railroads in New York City, if nowhere else. Outside of New York City we have a record here that shows a small amount of claims paid.

[fol. 764] Afternoon Session

Commr. Mitchell: The hearing will come to order.

2 P. M.

I would like to have the railroads furnish this information:

First, the number of cars of eggs shipped into New York City during the year 1949.

Second, the number and amount of claims filed against those cars, filed in 1949.

Third, the amount of claims paid by each railroad, listing the railroads separately.

Personally, I can see no reason why that cannot be supplied.

Mr. Knowlton: Mr. Commissioner, I had intended to announce that during the noon recess we have telephoned to New York and gotten the 1948 figures. We have the 1949 figures up to December 31, but there may be some further detail and we intend to put that on this afternoon. It may be that that will pretty well give you what you want.

Commr. Mitchell: Well, I would like to have this record kept up to date because, to me, of course, that is the very important thing in this whole investigation.

Mr. Knowlton: We are bringing it right up to the first of the year, Mr. Commissioner.

Commr. Mitchell: Now, Mr. Blanchard wants to put a witness on out of order, which I understand is satisfactory to the rest of the parties.

Mr. Knowlton: Yes.

[fol. 765] Mr. Blanchard: We will call Mr. Wells.

L. R. WELLS was sworn and testified as follows:

Direct examination:

Mr. Blanchard: There are one or two minor corrections I would like to have made in the exhibit.

By Mr. Blanchard:

Q. Mr. Wells, you are the person described in the affidavit filed here which describes the method by which Exhibit No. 38, offered by Armour & Company, was compiled?

A. Yes.

Q. I believe you have in checking over that exhibit found two or three small errors which you wish to correct before cross-examination. Will you read them into the record?

A. Yes. The first one is the situation where our Portsmouth, N. H., branch house schedules submitted with the other branch houses was omitted from the summary. It amounts to the addition of one figure to the 1948 figures, and one car to the 1949 figures, and neither of these cars involve any damage.

The second item refers to two cars being shown for our Scranton unit for 1948, which should have been shown as 1949, on page 1 of this exhibit. However, on page 3 they were shown under the 1949 column, so the net correction to be made is a deduction from the 1948 total on page 1.

Q. 163 down to 161?

A. That is right.

[fol. 766] Q. Plus the one car from Portsmouth, which would make it up to 162 again?

A. That is right. Somewhat offsetting that.

On page 1 there is a typographical error. The first item, which reads "$323" should be "$373" and this $50 error is carried forward into the totals.

Also on page 1 there is a typographical error in the note labeled "A," which now reads $277.20 and should read $227.20, and this correction does not change the figures opposite the Erie branch house unit which it concerns in the body of the schedule.

Finally, opposite the caption "Pittsburgh," another of our units, the amount of the claim is shown as $399.87——

Q. That is on page 2?

A. Yes. That should be $619.62.

Q. Otherwise, you have checked the remaining figures and found them correct?

A. Yes.

Mr. Blanchard: Now, if the Commission will permit, these errors are very infinitesimal and would not affect the cars more than a dollar or two at any point, but I would like to file a corrected exhibit reflecting these corrections.

Commr. Mitchell: That will be satisfactory.

Mr. Blanchard: You may cross-examine.

Cross-examination.

[fol. 767] By Mr. McDonald:

Q. Mr. Wells, do I correctly understand that at least broadly stated it is the position of Armour & Company that the explanation for the high claims at New York stems largely, if not entirely, from the necessity of floating the great majority of these shipments?

Mr. Blanchard: I object to the question. I think it is counsel's job to state the company's position.

Commr. Mitchell: If he can answer it, he ought to answer it.

The Witness: Well, in my experience in this area, we have related this higher claim expense to these floated cars. Does that answer your question?

Mr. McDonald: No, I don't think it does.

Could we have that question read?

(Question read.)

By Mr. McDonald:

Q. Could you say that was broadly or substantially true in the majority of cases?

A. I think it is substantially true, if I understand you correctly.

Q. Now, if I followed your exhibits correctly, they show that on cars floated at New York the average, looking at—the sheets do not seem to be numbered on my copy,

but looking at what I would consider page 3 of Exhibit 38, the average per car damage runs about $323.44; is that correct?

A. Yes, sir; for 1949.

[fol. 768] Q. Excuse me. I guess it is page 2. It is not numbered; the following is page 3.

Mr. Blanchard: I have a numbered exhibit here, if you wish to use it.

Mr. McDonald: But there is no number on page 2.

By Mr. McDonald:

Q. Are you familiar with the detail or history of any of the claims set forth on page 1 of that exhibit?

A. I have seen—on page 1, I have seen the detail on at least one claim there, the one opposite our Erie, Pa., branch house.

Q. Well, that particular one shows that two out of seven cars were received with some damage, and your claim for that was $962.03; is that right.

A. Yes, for the two of them.

Q. And is $962 figure the amount that was claimed, or the amount that was paid?

A. That particular amount is the sum of two claims which were made by our branches against our Chicago accounting and claim organization. It may be slightly greater or slightly less than the actual amount of the official claim.

Q. In other words, either that was the amount claimed or that the amount paid was substantially in the vicinity of that figure?

A. That is substantially the amount of the claim; yes, sir.

Q. And I take it that would be the answer to the shipment right ahead of it, $377.71?

[fol. 769] A. Yes, sir; that would be applicable to all the amounts on there.

Q. Would it also be true with respect to three cars at Newark where the claim figure is shown as $1,063?

A. Yes, sir; it would apply in that case also.

Q. Do you have any particular explanation to offer as

to why the claims on those particular shipments where no floatage was involved should be that high? In other words, the amount on those cars, $962 for two cars, would be in round figures $480 a car; considerably in excess of your $323 figure for the New York float. Do you have any explanation for that?

A. No, I don't have an explanation for the nature of the damage sustained in each one of these cases.

Q. Does it strike you to be a little conflicting with your testimony, then, that the damage for New York must be largely attributable to the necessity for float movement?

A. I haven't considered it inconsistent in considering averages. Aren't we comparing specific amounts that are selected at random against a very preponderant average affecting the New York area?

Q. I don't know what you are comparing, Mr. Wells. I am simply taking your Exhibit No. 38, and I presume the 163 cars here represent all the cars on which you had claims during 1948, and as to those I took the first one, which you said you were familiar with, and show that as to those two cars your claim was $480 per car. Then [fol. 770] I asked you in view of the fact that you said your claim experience around New York, you would attribute to floating, if that wasn't somewhat inconsistent with that fact in view of the fact that your Erie damage is $150 a car higher than your New York damage?

A. In the case of that Erie claim, we have treated that separately in consideration of it, anyway, because actually it amounted to, I believe, around $700.

Q. There was no floatage involved in the Erie shipment; right?

A. That is right.

Q. And still those two shipments exceeded by a couple of hundred dollars, or more, your New York average where floatage was involved; is that correct?

A. That is correct.

Q. And that would be true at Newark, N. J.; it would be true with Worcester, Mass.; it would be true at Batavia, N. Y., in the 1949 column; and it would be true at Stamford, Conn., likewise, in 1949 column; is that correct?

A. That is true.

Q. Do you have any special explanation to offer as to

the probable cause of the fact that the claims I have referred to exceed your New York float figure if, as you say, the New York float figure is high because of the need for floating that particular traffic?

A. No, I don't have any special final explanation for it. [fol. 771] I can only say that we in our experience in shipping to many houses over a large area know that some place along the line we are going to bump into a severe damage, not maybe regularly, and surely not regularly, and that characterizes perhaps a difference between our organization as a whole around the countryside versus this comparison you are making with just the New York floated product.

Q. On the second page of your Exhibit No. 3, Mr. Wells, I notice that for the year 1948, at Baltimore, eight cars resulted in claims roughly to sixteen to seventeen hundred dollars. That isn't specially out of line with the figures shown down below for cars floated to New York Pier 20; isn't that so? Seven cars, $1,618, Pier 20; do you see the figure?

A. Yes, I see them. I am just looking at them.

That is right.

Q. In other words, Pier 20, seven cars of 25, incur $1,618 damage, and eight cars out of 26 at Baltimore $1,666. Do you know whether or not the Baltimore cars were floated?

A. I don't believe there is any floating involved in Baltimore.

Mr. McDonald: That is all, Mr. Commissioner.

Commr. Mitchell: Redirect?

Redirect examination.

By Mr. Blanchard:

Q. Let's refer to Erie, Pa. The figure you gave was the experience at Erie in 1948, was it not?

A. Yes.

[fol. 772] Q. What was the experience at Erie, Pa., in 1949?

A. We had no cars, no damage, no claims.

Q. Now, let's go to Baltimore on the second page, 26

cars, eight damaged, $1,666. That was also a 1948 figure, was it not?

A. Yes.

Q. Amounting to about $208 per car damage?

A. Yes.

Q. Now, in 1948, at Pier 20, you had $218 per car, roughly the same amount per car damage, did you not?

A. Yes.

Q. Why is it we show no receipts at Pier 20 in 1949? Due to some change in operation of the division up there?

A. Well, we have simply not shipped them into—that means of getting them in there.

Q. But you are still using the team track?

A. Yes.

Q. Do you know the extent to which the service required to reach Pier 20, and to reach the team track, is similar? Do they both require floatage?

Mr. Canny: Team track at Pier 20?

Mr. Blanchard: No, team track in Brooklyn.

By Mr. Blanchard:

Q. Do both require floatage?

A. Yes, sir.

Q. In regard to Baltimore shipments, what was your [fol. 773] approximate average in 1949 compared with 1948, damage per car?

A. It was considerably lower. In 1949 it averaged something over $100 per car.

Q. As compared to $208 in 1948?

A. Yes.

Q. Taking your float delivered amount, what was your change in 1948-1949 per car damage?

A. The damage is greater per car damaged in 1949 by about $60 a car.

Q. In other words, in 1948 you show Baltimore $208 a car, the float service $266 per car. In 1949 you show Baltimore barely over $100 a car, and the float services $323 per car; is that correct?

A. Yes.

Q. In one case, the Baltimore case, the situation im-

proved; in the case of the floated cars it got worse; is that correct?

A. Yes.

Mr. Blanchard: That is all.

Commr. Mitchell: That is all, Mr. Wells. You are excused.

(Witness excused.)

Commr. Mitchell: Is that all, Mr. Blanchard?

Mr. Blanchard: Yes.

I want to thank everyone for letting me put on the witness at this time, including the Commissioner.

Commr. Mitchell: We are always glad to help anybody [fol. 774] out when we can.

Now, we will continue with Mr. Schilt.

Leon Schilt was recalled and testified as follows:

Mr. Reilly: We have no further questions, Mr. Commissioner. We have completed our cross-examination.

Commr. Mitchell: Do you have any redirect?

Mr. Matson: Yes.

Redirect examination.

By Mr. Matson:

Q. Mr. Schilt, do you know anything about egg packing machines? Have you ever seen one?

Mr. Zearfaus: He has already answered me on that one.

The Witness: Not an egg packing machine, no.

Commr. Mitchell: Are there egg packing machines?

Mr. Zearfaus: I am told there are, Mr. Commissioner.

Mr. Reilly: The lifting of the eggs out of the oil and putting them in the cases is done by machinery, isn't it?

The Witness: It is done by machinery in going through the oil, but in putting them in the case that is done by hand. Approximately three dozen eggs are picked up from the oil by the machine, and they are placed in the crates by hand. That is done by an operator.

Mr. Reilly: Aren't they dropped into the filler by mechanical arms on the machine?

The Witness: I have never observed a machine operation [fol. 775] of the type you are talking about.

Mr. Reilly: You have observed the oil process?

The Witness: Yes.

Commr. Mitchell: How do the machines pick up the eggs? Does anybody know about that?

Mr. Reilly: Can we go off the record a moment?

Commr. Mitchell: Yes. Off the record.

(Discussion off the record.)

Commr. Mitchell: All right, go ahead, Mr. Matson.

Mr. Matson: That was the only question I had, Mr. Commissioner. I only had that one question about the egg packing machine, and I was wondering if there was such a thing.

Would you like to say anything more about that, Mr. Schilt?

The Witness: No. I haven't anything more to say about that unless Mr. Winters could give us some further information. He may know more about it than I do.

Commr. Mitchell: Mr. Schilt, you have made a study of this situation in New York, haven't you?

The Witness: I have, sir.

Commr. Mitchell: What, in your judgment, is the cause, the reason for the payment of these huge amounts of money in claims in New York City?

The Witness: I am inclined to believe that it is the difference in the transportation operations in connection with the cars going into New York City. It is something [fol. 776] that doesn't prevail elsewhere.

Commr. Mitchell: We know that. Now what is the different operation going into New York City that makes you come to that conclusion?

The Witness: It may be the additional handling on the part of the carriers. Eggs at New York City are practically entirely handled by the rail carrier employees——

Commr. Mitchell: You mean they are unloaded on the pier?

The Witness: That is correct, sir.

Commr. Mitchell: What about the New York Central? Do they unload their cars, too?

The Witness: Yes, that is at St. Johns Park.

Commr. Mitchell: Do they unload some cars at Philadelphia?

The Witness: I wouldn't state offhand, sir. I do not know.

Commr. Mitchell: Your investigation has led you to the conclusion, I take it, that the claims were properly handled there?

The Witness: Yes.

Commr. Mitchell: You don't think that there is any question there as to the method by which they are filed by the consignees, or the manner in which the railroads pay them; is that right?

The Witness: That is correct, sir.

Commr. Mitchell: So we get down, then, to a question of operation into New York City.

The Witness: That, in my opinion, is where the trouble [fol. 777] may lie.

Commr. Mitchell: Well, now, how can that be corrected?

The Witness: Perhaps by the physical handling of the cars. Something must have taken place during the past few years——

Commr. Mitchell: That is our job to find out what that something else is. You have been over there and studied it. We want your views on it.

The Witness: My studies did not go beyond the piers and the warehouse where the cars were unloaded.

Commr. Mitchell: You don't believe in any tolerance whatever?

The Witness: No, sir; I do not; not while the present paragraph 11 to section 20 of the Act is in existence.

Commr. Mitchell: Do you think the tolerance would reduce the claims filed against the railroads in New York City?

The Witness: The tolerance, in my opinion, will only reduce the claim payments, but not the causes of damage. If the carriers can eliminate the cause of damage that automatically will eliminate all claim payments.

Commr. Mitchell: You have no further suggestions or

information with regard to what is the cause of this damage?

The Witness: No, sir; I have not.

Commr. Mitchell: You wouldn't believe that the carriers could carry these eggs in there and pay these huge amounts of claims, do you?

[fol. 778] The Witness: They are doing it.

Commr. Mitchell: I say, should they do it?

The Witness: If they are responsible for the damage, yes.

Commr. Mitchell: I mean as representing the farmer, isn't the fact that every dollar of claims that these railroads pay have to come out of the pockets of some shipper? The railroads have no special funds except the funds they collect from shippers; isn't that true?

The Witness: Yes.

Commr. Mitchell: So somebody is paying that either by way of an excessive freight rate—or by way of an excessive freigh. rate if these claims are to be paid on account of these huge claims?

The Witness: That may be.

Commr. Mitchell: And isn't that the problem which the Department of Agriculture is vitally interested in?

The Witness: We are vitally concerned about the needless waste of agricultural commodities when perhaps there is no reason for it. Eggs had been transported quite profitably in the past. I know that from my own personal experience.

Commr. Mitchell: Let's consider that a minute. But when they were profitably handled there were no large claims paid.

The Witness: That may be true, sir.

Commr. Mitchell: We know, as a matter of fact—I think this record shows it,—that the claims increased from [fol. 779] $100,000 in 1940 or '41, to $1,600,000 in 1947.

The Witness: Well, we cannot lose sight of the fact that the tonnage more than doubled within a matter of a few years.

Commr. Mitchell: In volume of eggs.

The Witness: Yes, sir; that is shown on Exhibit No. 35, on page 7.

Commr. Mitchell: Well, let's double the amount of claims, then. We are still a long way apart.

You will admit, won't you, that when the railroads are paying about 50 percent of the total amount received in freight rates that they are paying an excessive amount of claims?

The Witness: It appears that way to me, sir.

Commr. Mitchell: It must more than appear, because if it is true that they pay back 50 percent in claims, then they should not have that high a rate, should they?

The Witness: I am afraid I can't answer that one.

Commr. Mitchell: Well, maybe you shouldn't have to answer it.

You know, of course, that this record shows some huge payments of claims to consolidators in the Middle West where there was no repacking and rehandling at the rail head?

The Witness: I did not see any specific figures in connection with consolidators' cars, sir, so I am at a loss to answer that question, also.

Commr. Mitchell: From your studies you have no other [fol. 780] suggestions to make to us at this time?

The Witness: At this time; no, sir.

Commr. Mitchell: Are there any further questions of the witness?

Mr. McDonald: I have one I would like to ask, Mr. Commissioner, if I may.

Commr. Mitchell: All right.

Recross-examination.

By Mr. McDonald:

Q. Mr. Schilt, did I understand you to say in response to one of Mr. Commissioner Mitchell's questions, that you thought the major cause of damage at New York versus other points as the fact that the carriers unloaded the eggs at New York?

A. That, in my opinion, may be one of the causes. What other factors are involved, I do not know.

Q. Would you say it is the major cause, in your opinion?

A. No, my studies have not gone that far.

Q. Can you honestly express an opinion in that respect at

all, in response to Commissioner Mitchell's question? In other words, has any part of your study actually broken down the causes of damage in such a way that you can say that because the New York Central unloads eggs at St. Johns Park, or the Lackawanna unloads eggs on one of its piers, and the Erie unloads on one of its piers, and that they don't perform such service at Buffalo, Chicago, or any place [fol. 781] else, that the unloading is the vital cause? On the basis of your studies, can you actually say that?

A. I didn't study it to that extent, Mr. McDonald. I am afraid I couldn't answer, as much as I would like to on that particular point. But the thing in the back of my mind is this: That when eggs are packed they are packed no differently when destined to New York or destined to points elsewhere. Cars originally consigned to Boston may be diverted to New York, or cars consigned to New York originally may be diverted to Baltimore. There must be some physical difference in transportation that takes place. Now, just what it is I do not know.

The only thing I do know about that that is dissimilar between all points of destination is the fact that largely in the New York City area the railroad employees unload the cars. The consignee does not have access to those shipments until he gets the signal from the freight agent, I guess, at the pier that his car is ready for delivery.

Q. But you couldn't do any more than surmise as to what the real answer might be at New York?

A. That is right.

Mr. McDonald: That is all I have.

Mr. Matson: No further questions.

Commr. Mitchell: Any further questions?

(No response.)

Commr. Mitchell: Thank you, Mr. Schilt.

[fol. 782] (Witness excused.)

Commr. Mitchell: Mr. Staley, do you have some evidence you desire to put in?

Mr. Staley: Yes, Mr. Commissioner. Mr. Ford is here for cross-examination, but before that I also have a few

more questions I would like to ask him, and some more testimony to bring down to date the figures he put on at Brooklyn.

Commr. Mitchell: We will be glad to hear further from him.

GILBERT F. FORD was recalled and testified as follows:

Direct examination.

Mr. Staley: May I have identified this exhibit which Mr. Ford will present?

Commr. Mitchell: It will be marked Exhibit No. 40.

(Exhibit No. 40, Witness Ford, was marked for identification.)

By Mr. Staley:

Q. Mr. Ford, since the Brooklyn hearing in this proceeding, have you prepared some additional testimony and one additional exhibit which has been identified as Exhibit No. 40?

A. I have.

Q. Will you proceed with your testimony?

A. At the Brooklyn hearing in this proceeding, I stated that during the calendar year 1948, we had only five shipments of graded eggs upon which we filed railroad claims. [fol. 783] This rule became effective July 24, 1948, and from that date until the end of December, 1948, we shipped a total of 159 straight carloads of graded eggs, 39 of which went to New York, and 120 to other than New York. This does not, by any means, represent the total number of cars that contained graded eggs because many of our mixed cars of dressed poultry, butter and eggs, contained graded eggs; but even if we confine our computation to these cars, we will find that claims were filed on five cars, which would represent 3 1/3 percent of our straight carloads of graded eggs. This indicates clearly that our graded eggs move as satisfactorily in rail transportation as do regular rehandled and repacked eggs. In fact, the percentage of graded egg claims to the total straight carloads of graded eggs is con-

siderably lower than our average of all shipments in straight carloads. This disputes the carriers' theory that graded eggs have a greater claim hazard than others.

Q. At this point, Mr. Ford, let me ask: That period was after the tariff amendment went into effect which placed in effect the 5 percent tolerance on graded eggs; is that right?

A. That is right.

Q. Wouldn't that fact alone explain why the number of these claims on graded eggs is so small?

A. This covers all of the claims that were developed on graded eggs, whether they were against the railroads or against us; that is, against our plant.

[fol. 784] You see when we handle claims for damage to shipments of eggs from our branches, they file a claim with the Chicago office and that claim is their check to determine whether it is to be set up against the railroads or against the shipping plant.

Q. In other words, when the branch house sends the claim in, they don't apply any tolerance at all?

A. That is right.

Q. The tolerance is applied in the transportation claim department; is that right?

A. That is right.

Q. And these claims representing 3 1/3 percent, did that include all claims that were sent in by branch offices for damage to the graded egg shipments?

A. That was every claim that came in from the branch houses. For that little less than six months' period.

Q. Now, proceed with your prepared testimony.

A. Another thing that might be mentioned is that in 1947, the total claims reported by the A.A.R. for loss and damage amounted to $122,000,000. This is not such an extraordinary figure when we find that in 1920 they paid over $124,000,000 in claims.

Apparently, the carriers have been reluctant and, in fact, have attempted to prevent any testimony concerning the rough handling of shipments of eggs, but it is encouraging [fol. 785] to the shippers to hear a man like President Barriger of the Monon Railway make the statement he did recently before the Great Lakes Regional Advisory Board at Buffalo, N. Y.——

Mr. McDonald: Mr. Commissioner, I respectfully object to the testimony at this point on the ground that it is hearsay. There has been no evidence in this proceeding, that I know of, that tended to show, for example, if there is rough handling or operating mishandling of any kind; that it is limited to switch movement, for example, as distinguished from line-haul movement or anything of that character. Obviously, we cannot cross-examine Mr. Barriger of the Monon Railway.

The Witness: He works for you railroads.

Mr. Staley: May I say that that is in the nature of an admission from one of the high officers of one of the railroads that are in here, and they can call on him to question him with respect to this, if they want to. We don't object to that.

Mr. Canny: All he said was that the railroad men should be trained, but they——

Commr. Mitchell: I am afraid we can't let that in here.

Mr. Staley: Well, Mr. Commissioner——

Mr. Knowlton: I would like to object to the next paragraph continuing over to page 3, and the argument following it. That is no more relevant here writing it up this way than it would be if you tried to put the Traffic World in.

Mr. Matson: I would like to say, Mr. Commissioner, that [fol. 786] in Ex Parte 168 similar testimony was put in by witnesses and was received by the Division hearing that case, and I would cite that as a precedent for receiving this.

Commr. Mitchell: What do you mean—as to rough handling by railroads?

Mr. Matson: Testimony that is in the nature of this here, but which is an admission by a railroad president that there is something wrong in the way the railroads are being operated. That type of testimony was received in Ex Parte 168.

Commr. Mitchell: I don't know what it was received on. Was there an objection made to it?

Mr. Matson: Oh, yes. And the same statement was made by a number of shipper witnesses, as I recall.

Commr. Mitchell: Well, I myself, cannot see where this testimony would be admissible under any conditions, I am sorry. If that ruling doesn't meet with your approval you

can go to the Commission on it. But I cannot see where it is admissible here. I don't even know who this man is.

Who is he?

The Witness: The president of the Monon Railroad.

Commr. Mitchell: I don't know him. I don't know anything about the Monon Railroad.

I don't think we want to establish that kind of a rule here.

Mr. Staley: May I, then, Mr. Commissioner, in view of that type of objection; have leave to have copied and placed [fol. 787] in evidence a copy of the Traffic World for January 20, 1950, or at least that portion reporting the statement by Mr. Pilcher?

Mr. McDonald: I object to that, too, Mr. Commissioner. I have no way of knowing how accurately the Traffic World reported these statements.

Commr. Mitchell: You have struck a bad man in that regard. I have no particular quarrel with the Traffic World, but another railroad magazine is one I am very much interested in lately. I do not think that is admissible.

Do you, Mr. Staley?

Mr. Staley: Yes, I think so, because the shippers have no other way of proving this highly relevant testimony.

Commr. Mitchell: You can take his deposition.

Mr. Staley: Neither you nor I having read this in the Traffic World would for one instant question that he said that. He is in a position so that his statements are very relevant in this case, and this is in the nature of an admission. The Commission is not bound by the usual rules of evidence.

Commr. Mitchell: Was it reported in the paper? We public officials in Washington find write-ups that we do not believe are very accurate in some of the newspapers, and I do not think you ought to put that in.

I will have to sustain the objection.

Mr. Staley: Mr. Commissioner, may I offer in the record some fashion this portion which has been excluded, as the [fol. 788] offer of Swift & Company—that is, the offer of the testimony? I would like to get it in the record somehow or other. I would like to offer it in case the Commission should later decide to change the ruling.

Commr. Mitchell: Why don't you submit it in the form of

an exhibit and we will give consideration to whether it will be permitted to be entered as an exhibit, or not, and you gentlemen can make your objection to it.

If you want to have my views upon newspaper reporting, why, I made a public statement in here a week ago—it probably was not a very smart thing to do, but some of us—I am one of those unfortunate individuals who believe in saying what they think.

Mr. Staley: I would like then to offer as an exhibit the first three pages of the prepared testimony which Mr. Ford has prepared for this hearing. That includes the statements to which the objections were made.

Commr. Mitchell: You will submit it in written form so the offer can be considered?

Mr. Staley: Yes, sir. I have sufficient copies here. I can submit them right now. I thought that it could go in as a rejected exhibit, or some such file, so it would be in the record.

Commr. Mitchell: Some such file?

Mr. Staley: I am not telling the Commission what to do with it.

[fol. 789] The Witness: We could have it redrafted and submitted in a few days if you would like to put it in in regular form.

Commr. Mitchell: Well, just submit the first three pages you are offering. I will rule on that and in that way we will get it in the record.

Mr. Staley: All right, sir.

I offer the first three pages of this statement.

Mr. McDonald: May we have it understood, then,——

Commr. Mitchell: Well, we would have to mark it in some way.

Off the record.

(Discussion off the record.)

Commr. Mitchell: On the record.

Mr. Staley: I now offer the following testimony: If it were accepted and not rejected on the objections of the defendants, that if permitted to testify Mr. Ford would testify that President Barriger of the Monon Railroad recently made a statement during the Great Lakes Regional Advi-

sory Board at Buffalo, New York that the railroad men who are engaged in switching freight cars should be trained to exercise caution in switching so as to prevent loss and damage to the lading. Mr. Barriger said, in speaking of switching movements, "Anything over four miles an hour is a collision and the proper maximum of speed is two miles an hour." He also said, "The present loss and damage bill is a subject not understood by the men who actually shift [fol. 790] cars." . . . "We train men to improve their skills and workmanship in many phases of railroad maintenance and office work. Why not include the neglected subject of careful switching. Educate the men who actually handle these cars, the men on the ground, the train crews."

Then Mr. Ford would further testify that Mr. Lewis Pilcher of the Freight Claim Division of the Association of American Railroads before the Midwest Advisory Board meeting which was reported in the Daily Traffic World of January 20, 1950; that the article was headed "Railroad Claim Efforts" and is as follows:

"Mr. Purcell then presented Lewis Pilcher of the A.A.R. freight claim division who reported on efforts of the railroads to prevent freight loss and damage.

"Mr. Pilcher declared that the progress in the fight on freight damage claims was genuinely encouraging. It took time for claim prevention efforts to produce bookkeeping results, he said.

"'We are predicting that the total rail freight claim bill will fall from $135 million in 1948 to $115 million in 1949, a decline of 14.5 per cent,'" he stated. "'We know that the number of claims received has fallen from 4,890,000 in 1948 to 3,645,000 in 1949. This is a decline of 25 per cent.'

"Mr. Pilcher explained the work of his division in direct- [fol. 791] ing efforts nationally to reduce freight claim payments. He described the manner in which claim statistics were broken down into 40 commodity groups and listed under sixteen general causes.

"'Our major trouble today centers in citrus and other fruits and melons,' he said. 'We have recently engaged a ceramic engineer to aid our campaign to reduce damage to enameled products, and we shall shortly have a canned goods expert to help with that commodity. We have special

committees working to reduce damage to new furniture, and to fruits. The transportation of sewer pipe has always given us trouble. Another big problem is newsprint, which is loaded according to instructions from the publishers. As to eggs, in which Commissioner Mitchell has interested himself, conferences have been held, and further ones planned are for Chicago and the Pacific Coast.

"'Railroad research has shown that vertical vibration occurs in freight cars traveling at a speed of 42 miles an hour, and again at a speed in the high 50's. The railroads are working on devices to overcome such vibration, such as snubbers and ride control trucks. The A. A. R. mechanical division this year will end a three-year testing program on these devices, conducted in southern Illinois on the Illinois Central. Tests are also under way to overcome longitudinal shock.

"'In the campaign for careful switching, meetings of [fol. 792] rail officials embracing everyone from the presidents down to the assistant yard foremen have been held in Chicago, St. Louis, and Buffalo and further meetings are scheduled in New Orleans, Kansas City, the West Coast, the Twin Cities, Omaha and Denver,' he said. 'The new A.A.R. laboratory, under construction on the campus of the Illinois Institute of Technology in Chicago, will open in April.'".

Commr. Mitchell: All right, make the objection now.

Mr. McDonald: I would like to object in the first place generally on the ground that it is incompetent, immaterial and irrelevant here, and I would like to object specifically on the ground that it is hearsay. It does not show the full context of the circumstances under which it was made and denies the defendants here the right of cross-examination.

Mr. Staley: In answer to the objection for the record I would like to state that the Commission of course, in the first place is not bound by the usual rules of evidence, and in the second place that is in the nature of an admission; in the third place, the defendants can call either of these persons and have them explain the context in which the statement was made.

In the last place, that information of that kind is wholly in

the hands of the carriers and the shippers have no other way of getting into the record vital and relevant information of this kind except in the manner in which we have attempted [fol. 793] to do so.

Commr. Mitchell: Well, I will sustain the objection; I think it is purely hearsay and I think the carriers should have the right of cross-examination. The objection is sustained.

Mr. Knowlton: Mr. Commissioner, I would like to object to the testimony which follows on the bottom of page 3 over to the middle of page 5. It purports to be a description of what you might say is a wreck in the Swiss plant and it is a tank-car of lard, and I do not think that it has anything to do with this question. He ties it in with the testimony which has been excluded of Mr. Barringer and Mr. Pilcher.

Commr. Mitchell: Do you know what this is, Mr. Ford?

The Witness: This is of my own personal knowledge. I was there.

Commr. Mitchell: All right, you may go ahead.

By Mr. Staley:

Q. In presenting your testimony, leave out any further reference to these statement- of Mr. Barringer and Mr. Pilcher.

A. Then I will begin with the last sentence——

Commr. Mitchell: I think that three-line paragraph on page 5 referring to Messrs. Barringer and Pilcher should go out—that one paragraph.

The Witness: We will drop that off.

Commr. Mitchell: All right go ahead.

The Witness: I shall begin at the last sentence of the [fol. 794] first main paragraph of page 3.

It is perfectly obvious that the publication of that rule did nothing but transfer the responsibility from the railroads to the shippers, without going into the merits of such action.

We have observed that the railroads are not giving the attention to the careful handling of carload shipments that they should. In my previous testimony, I mentioned an accident occurring at Chicago. Upon my return to Chicago from the Brooklyn hearing, or within a few days there-

after—specifically on December 29, 1949—we had a tank car of lard placed at one of our buildings at Chicago. This tank car was attached to the steam lines from our building and the steam was being run through the coils to melt the lard so that we could draw it into our plant. This car, TATX 51881 was placed at Dock 5 at our Hammond plant in the Union Stock Yards. There were two tank cars between this car and the bumping post and six additional cars of one kind or another behind it. A number of these cars had to be moved because they had been unloaded and released to the carrier. When the railroad was ready to move these cars we detached our steam lines so that they could pull them out. The two cars that were between this tank and the bumping post were for out-bound movement; therefore, when the cars came back on to the track, GATX 51881 was first and the two other cars were coupled to it and these three were to be replaced at the dock. The three [fol. 795] cars were turned loose on to the siding at dock 5, instead of being carefully placed so that they we could hook up our steam lines and being turned loose, they move onto the track and this tank hit the bumping post, tore it out and the car damaged our loading dock. At this particular location the building is in an "L" shape and the track ends right in the corner so that when the car tore out the bumping post and jumped the track, its forward movement was directly into the dock. There was not only damage to the track and our dock, but the seams were spread on the tank and the entire body of the tank was shifted on the underframe. Being unable to do any repair work at the Hammond dock, the carrier having asked us to handle for their account, we had the car moved back to our repair yards where we caulked the seams and then set the car at one of the Swift locations, where it was again put under steam and later unloaded.

The spreading of the seams was sufficient that there was a loss of 775 pounds of product.

The important phase of this illustration is that the end of this track to which the bumping post was attached was in the corner of our bulding and any car moving to that spot would have to be handled with reasonable care to keep from damaging the building. Furthermore, the spot at

which it was supposed to be placed to be re-attached to the steam lines was the third-car length before we reach the bumping post.

[fol. 796] Much has been said about the reasons for the high percentage of claims at New York. We receive a few eggs at our Gansevoort-Barclay Market located about 10th Avenue and Fourteenth Streets in New York on the New York Central, and it is presumed that the deliveries to this point are by direct rail.

We do have some shipments to our West Harlem Market, and we notice that some of this traffic is floated from the west shore. Principal movements that we have to this area are to Fresh Pond and Port Morris. The shipments to Fresh Pond are routed PRR and the Long Island, being floated from Greenville, N.J., and the shipments for Port Morris are routed via the New York Central and are delivered direct by rail without floating.

Apparently these shipments do not receive any handling through the freight houses or piers of the railroads at New York and by that I mean unloaded on the piers. In our figures for New York we include Newark, N.J. which of course would not be floated.

We have no way of telling where the damage occurs but, apparently the railroads are concerned about the switching.

Mr. MacDonald: I am going to object to the balance of this paragraph.

Mr. Staley: I think the latter part of the sentence is highly material and furthermore, it is a fact, that is, the latter [fol. 797] sentence of the paragraph.

Mr. MacDonald: If I may be heard on that, there is nothing in the record that I have heard indicating anything at all about switching. It has just been haphazard guessing as to that being so. That is the point I made previously. There is no testimony yet from anybody that switching as distinguished from line-haul handling or any other part of the handling by the carriers——

Commr. Mitchell: Are you familiar with this yourself, Mr. Ford? If you can testify as to it yourself, all right, but otherwise, it will go out.

The Witness: As to New York, I am not familiar with it personally.

Commr. Mitchell: It will be excluded.

The Witness: The Official Western and Southern Classification Committees held a hearing in Chicago on January 24, in which they proposed an egg tolerance rule to incorporate in the tariff the idea advanced by Mr. Hodkinson in his exhibit No. 28, offered at the Brooklyn hearing. Numerous shippers were present, as well as the U.S. Army. All objected to the establishment of any such rule because we felt that we were offering good eggs to the carriers and that their damaged condition at destination which were the subject of claim was caused by the handling of the carriers in transit.

Inquiry was made of the committee as to whether it was [fol. 798] their intention to publish the rules and whether they would be in tariff form prior to this hearing. The reply was that they would probably publish the rule, but could not get it in tariff form by the time of this hearing.

By Mr. Staley:

Q. Mr. Ford, did you prepare or have prepared under your immediate supervision what has been identified as Exhibit No. 40?

A. Yes, I did.

Q. Are the facts and figures therein stated true and correct to the best of your knowledge?

A. Yes.

Q. Proceed.

A. In that exhibit I included the letter I read into the record at the Brooklyn hearing, which you asked me to reproduce, Mr. Commissioner.

Commr. Mitchell: Thank you.

The Witness: This exhibit is designed to show some information in connection with certain of our claims, to quote the letter that I read into the record at the Brooklyn hearing, and to bring up to date certain other figures used at the Brooklyn hearing.

The first seventeen pages include the claim base and correspondence in connection with three of our claims. The first claim mentioned is No. GO 37468, in connection with which the Railroad Perishable Freight Inspection letter

[fol. 799] previously referred to applied. Our claim division filed this claim for $143.65.

Based upon the RPIA theory, the Chicago, Rock Island and Pacific Railroad Company offered us $131.95.

Based upon the theory indicated in my exhibit filed at Brooklyn, we are properly entitled to $129.30. Correspondence in connection with this claim is very clear. The basis used by the RPIA is entirely theoretical. The basis we have used takes into consideration the carriers' classification rule that requires us to admit that the shipment contained five per cent of shell damage when offered to the carriers, and the most that could possibly be found in our shipments are checks or cracks. We insist that these eggs can travel to destination just as satisfactorily as eggs that are not checked; in fact, no attempt is made by the inspectors at New York for the RPIA to give anything more than a visual inspection and, generally speaking, checks cannot be located in this manner. Some of the cases of eggs that I saw on the New York piers showed that the ends of the cases had been crushed and the first row of eggs for the height of the case along the end had been broken. Certainly, there can be no justification for a claim by the railroad that we should assume a proportion of such damage merely because of the five per cent tolerance rule applicable at origin, but this is exactly what the RPIA [fol. 800] settlement plan amounts to.

The next claim is our GO 38254 filed against G. W. Loderhose of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company at Chicago. This covered a shipment from Montevideo, Minnesota to Baltimore, Maryland. Our claim was originally filed for $37.79. The RPIA would reduce this claim to $33.36.

The third claim is our GO 36348, filed against the same railroad and covered a shipment from Montevideo, Minnesota, to Port Morris, New York. Here we filed a claim for $89.89. This was erroneously filed, but according to the RPIA theory, they would increase our claim to $92.67. When the proposed settlement was brought to my attention, I determined that our claim should have been filed for $98.89, or about $9 more than originally claimed, and about $6 more than offered by the RPIA.

I should like to add at this point reference to one more claim. GO 32960 filed against the Minneapolis and St. Louis Railroad, their No. 337749-2. The claim was filed for $557.60. This shipment consisted of a shipment of 600 cases of graded shell eggs. The RPIA offered settlement of this claim on the basis of $139.62. They later amended that offer to $278.80.

Now, what they are doing here is to insist that we take an average which will include the eggs that they actually destroyed—eggs some of which we were able to salvage into cans for freezing and others that were salvaged and sold as [fol. 801] checks or leakers.

As I stated in the Brooklyn hearing, we do not believe that we should take any portion of the damage that did not exist at origin, and we know what we pack; we know that we do not pack anything more than a checked egg, and very few of those, and whenever there is a settlement of a claim it should be on the theory that we would only be penalized as to those eggs that remained in the checked category, instead of averaging all of them.

For instance, in this case we had 256 and 1/12th dozens of total loss, 30 dozen leakers where the loss was 14 cents, 480 dozen where the loss was 16 cents, 30 dozen where the loss was 22 cents and 420 dozen where the loss was 24 cents per dozen. We say that the most the carriers should expect us to assume in a case like this would be the 480 dozen where the loss was 166, 30 dozen at 14 cents and 30 dozen at 22 cents and 60 dozen at 24 cents. This would mean that we would remove from that claim $101.80. That would leave our claim outstanding against the carrier $455.80. Yet the best offer thay have made up to date is $278.80.

This claim is important because it shows that where we start out with a carload of eggs that will be accepted at destination under its grade, and we reach destination with eggs in a damaged condition which may not be accepted, that the carriers are expecting us to assume a high propor- [fol. 802] tion of the damage that they caused and they not only want us to assume that damage but they want us to assume a proportionate share of the cost of labor and rehandling.

Q. Mr. Ford; let me ask you two or three questions about that claim. If there had been no five per cent tolerance rule, what would the amount of your claim have been?

A. The total amount.

Q. How much was that?

A. $557.60.

Q. Now, if that car started out at origin with one or two per cent checks or whatever the figures are of the Department of Agriculture indicate the cars start out with at origin, would you say that the 5 per cent tolerance and destination should be credited against those eggs which are checked or those eggs which are totally destroyed?

A. It should be charged against those eggs that are checked because that was what we started out with. But we would not have to bother about a claim if that car went on to destination the way it started out because it would be deliverable as a standard grade because the damage did not exceed the tolerance.

Q. I understand that, but I want to get clearly before the Commission the distinction between the way in which the carriers are actually applying that 5 per cent tolerance rule and the only way in which you say it should be applied. [fol. 803] They are crediting it as I understand it proportionately against all damaged eggs, including those totally destroyed upon which there is no salvage value?

A. That is right.

Q. And it makes a difference of how many dollars in this case as to——

A. The difference between $278.80 and $455.80.

Q. And it is also true that they credit the 5 per cent proportionately against the rehandling and repacking charge, is it not?

A. Yes. And that of course would be brought about entirely by the fact that there is a railroad claim.

Q. Now assuming that the eggs start out with 1 or 2 per cent checks at origin, there is to that extent shell damage to the eggs, is there not?

A. Yes.

Q. Does that result in financial damage to the shipper or the consignee if those eggs go through in good order?

A. No, the eggs may be delivered without exception at the full grade price.

Q. So the rehandling and re-packing is due entirely to damage inflicted by the railroad?

A. That is right.

Q. And that is what gives rise to the financial damage to the shipper or cost to the consignee?

[fol. 804] A. Yes.

Q. And these checked eggs would not cause him any financial damage whatever, unless it is necessary to separate them out and sell them at a lower figure, is that right?

A. Because of the railroad damage.

Q. That is right. So the entire amount of the financial loss suffered by the shipper or consignee is due wholly, is it not to the damage in transit by the railroads?

A. Oh, yes, and in this instance, we are assuming $101.80 because of the tariff rule, which we would not have assumed had the shipment gone through as we offered it.

Q. Is that all you have to say on that claim?

A. Yes.

Q. Would you proceed now with your prepared testimony.

A. It seems to us that the only sane way to apply this tolerance rule is to consider the five per cent as being in the car at origin, and then adjust the tolerances when the claim is filed to the kind of eggs that we know to be the worst damage in the car at origin, which is checks or cracks. Then, when we deduct our tolerance, we should deduct this type of egg from the claim and the carrier should pay us for the eggs that they have broken or destroyed by their rough handling. But they are not satisfied with this interpretation. They want us to assume part of the loss caused by their own rough handling and if they absolutely [fol. 805] destroyed 18 eggs in each case in a car and no more, they would refuse to pay us anything. We believe their present method of attempting to settle these claims is improper and we certainly believe it is unlawful for them to destroy nine hundred dozen eggs in a car containing six hundred cases and then refuse to pay anything.

Page 18 of the exhibit shows that for the first six months of 1948 we shipped 118 carloads of eggs by rail to New York and vicinity. For the same period of 1949 we shipped 66 carloads. To other than New York and vicinity in 1948 for the first six months we shipped 822 carloads and in the first six months of 1949, 569 cars.

Page 19 shows a comparison of the revenue freight originated in carloads and tons, the gross freight revenue and the carload claims paid showing the per cent of claims paid to gross freight revenue, for the first 6 months of the years 1948 and 1949.

Mr. Commissioner, I find that there are some errors in the balance of that paragraph beginning at the top of page 10 and if the gentlemen wish to make the changes as I read it, I shall be glad to go slowly.

Commr. Mitchell: All right, go ahead.

The Witness: It will be recalled that in 1947 the railroads hauled 26,800 carloads of eggs and that in 1948 they hauled slightly in excess of 21,000 carloads of eggs. The first six months of 1948 shows 12,678 carloads which is about one-half of the year's total.

[fol. 806] The first six months of 1949 shows 5879 carloads or a little less than one-half of 1948. If we estimate based upon the 1948 figures, the railroads did haul in the year 1949 about 11,000 carloads. Now, what do we find is the condition since 1947, and one which, by the way existed rather generally back to 1941 and farther?

In 1947 we had roughly 26,800 cars of eggs by rail. In 1948 we had 21,000 and in 1949 it appears that we will have about 11,000 so the railroads in three years have gone from 26,800 carloads annually to 11,000 carloads. This decrease, 1948 under 1947, was in excess of 20 per cent. The decrease first half of 1949 under the first half of 1948 is 53.5 per cent. It will be noted in the same column that the decrease in all carload freight was only 10.5 per cent.

Now, I shall add at the end of that paragraph the egg shipments according to the Commission's statistics for 1945 were 43,590, 1946 there were 38,530; in 1947 there were 26,800; and in 1948 there were 21,42-.

In the next two columns it will be noted that the ton-

of eggs have decreased more than the cars but as to all freight the decrease is about the same.

In the next two columns it will be noted that the tons of eggs have decreased more than the cars, but as to all freight, the decrease is about the same. The next two columns show freight revenue. Here the decrease in 1949 [fol. 807] is 53.8 per cent, being from five million to two million dollars. The gross freight revenue on all freight has only decreased 4.2 per cent. The next two columns refer to carload claims paid, and while I have no doubt that the amounts for claims in the first six months of 1949 really refers to a great percentage of cars that moved in 1948, the figures are really comparable because they represent the amount of dollars covered by claims paid during those two six-month periods. In 1948 we had a million dollars, and in 1949 we had $700,000. This is significant because for several years the railroads have been talking about increased claims up to 2 million dollars per year for loss and damage to eggs. In 1948 the carriers only hauled 21,000 carloads of eggs, which was some 6000 cars less than they hauled in 1947. If we consider that these figures might be objectionable because they refer to 1948 and 1949 and that they should not be used because they apply to a lot of shipments that moved in 1947 and 1948, we might compare these figures because in 1947 we had 26,800 carloads and the first six month's claims in 1948 amounted to a million dollars. In 1948 we only had 21,000 carloads, which represents a reduction of 20 per cent in the number of carloads handled; but the claims were in excess of $700,000 representing a reduction of 28.9 per cent. In connection with all carload freight, claims were reduced 1.2 per cent.

[fol. 808] Commr. Mitchell: What does that mean?

Is a fair way of figuring that, figuring that against the gross revenue received?

The Witness: I have very definite views on that subject because the claims for the year never represent the cars for the same year and where the number of carloads reduced as they did in 1948 and 1949, the per cent of claims paid would be much higher because many of those claims would be on shipments that moved during a heavy year.

Commr. Mitchell: Well, of course that might be true,

but looking at it from the other point of view, they had 5,759,000 dollars worth of gross revenue in the first six months of 1948 and they paid about 20 per cent, in rough figures by way of claims.

On the first six months of 1949 they had $2,662,000 odd and they paid 678,000; that is almost 30 per cent.

The Witness: And I am reasonably certain—I think the carriers would agree with me that—approximately 5 per cent or more of those claims paid in the first six months of 1949 had nothing to do with 1949 shipments.

Commr. Mitchell: That may be so, but it is a fair indication of what they are paying.

The Witness: I would think that it would not——

Commr. Mitchell: It is hardly fair to compare 48 and 49, where you do just about half of the business, is it?

[fol. 809] The Witness: That is the complaint that I am making against the railroads. That is the reason I set this up because we set up our figures 1948 shipments against claims on those identical shipments and the railroads have never done that.

Mr. Knowlton: Sure we had.

Commr. Mitchell: All right, go ahead.

The Witness: Now, take the last two columns on the page which show the per cent of claims paid to the gross freight revenue.

Now take the last two columns on the page which show the per cent of claims paid to the gross freight revenue. In the first six months of 1948, claims amounted to 18.8 per cent of the revenue, but the first six months of 1949, the claims amounted to 28.9 per cent of the revenue, or an increase of 53.7 per cent; while the increase on all carload freight was only 3.1 per cent, or from 1.306 per cent to 1.347 per cent.

Some question was raised as to page 7 of my exhibit 37 filed at the Brooklyn hearing concerning the per cent of increase in developing claims, which showed 14.4 per cent for points other than New York and vicinity, 18.6 per cent for New York and vicinity with a total average of 15 per cent. It was explained that this 15 per cent applied only to cars moving from our Dairy and Poultry plants. We have made a check of the carload shipments from our Dairy and Poultry plants which were

[fol. 810] either straight carloads of eggs or cars of dressed poultry, butter and eggs, or one of those commodities mixed with eggs, during the year 1948.

This amounts to 2,474 cars. Because of the extreme volume of cars from our meat packing houses, I have not attempted to check each and every car containing eggs, but it is a general practice at our meat packing houses to ship small quantities of eggs in our meat cars, especially to those branches which are not so situated that they can either get eggs promptly or in sufficiently small quantities for their needs, and this is, of course, further complicated by the fact that the various grades of eggs are demanded in certain territories.

We ship over one hundred thousand carloads of meat and meat products per year.

It has been impossible to check each and every one of these cars, but illustrative of this situation we have checked shipments from our packing house at Chicago for the year 1949, and we find that 520 cars contained some eggs in standard cases. This figure was determined by taking one week out of each month for a year, and it averages from our Chicago plant ten cars per week. This would be 520 cars per year.

The same situation would apply at our various other plants and it seems very safe to assume that the total number of cars shipped that contained some eggs in standard cases would be in excess of 5000 per year.

[fol. 811] This would have to exist considering our great volume which has not been subject to serious diversion to trucks until after May 1, 1949, and the diversion to trucks in 1948 was on the cars shipped from our Dairy and Poultry plants.

Mr. Staley:

Q. Mr. Ford, I call your attention to exhibit No. 39 which was offered by witness Streibing, and which shows the eggs received at San Francisco by the Army.

A. Yes, sir.

Q. You will recall that showed 31 damaged cases out of more than 155,000. Now, I also call your attention to Exhibit No. 40, page 18 thereof. At the lower right-hand

corner it shows that 569 cars of eggs were shipped by Swift and Company during the six months' period in 1949. That is the first six months?

A. That is right.

Q. Do you know whether or not a large percentage of those eggs were shipped to the Army at San Francisco?

A. Over half of the eggs were—over half of the eggs represented by that 569 cars were shipped to the Army or Navy at San Francisco, Oakland and Seattle.

Q. And of that 50 per cent what portion went to San Francisco?

A. The great majority of them.

Q. Does rough handling and damage to eggs while they are being transported by rail always result in external damage to the cases?

[fol. 812] A. Not always.

Q. Explain your answer.

A. It is quite logical to—quite often a fact that you find eggs damaged in cases which have had a very severe shock, either to the extent of breaking down the bracing or being jammed against the bulkhead at the end of the car, particularly in the case of wooden cases. The case might not be damaged but the interior packing might be damaged sufficiently to damage the eggs.

Q. Mr. Ford, do you consider the present tariff provision which permits an inspection of the top layer of 20 cases in a car of eggs to be also fair to the carriers?

A. I think that it is more than fair to them.

Q. Is it fair to the shippers?

A. I think that it is less fair to the shipper than it is to the carrier.

Q. In what respect?

A. For the very reason that when you have a damage it is more likely to be end-damaged and if it is end-damaged it will run down the depth of the case rather than across the top. If a rack was knocked out of position in the shifting of the load because of a shock, your damage might be only on the bottom of the case or the bottom two or three layers in the case of a fiber case.

Q. That means, in other words, that you might have a [fol. 813] car where you would find no damage in the

eggs in the top layers of the cases selected but you would find damage in the other layers, is that right?

A. That is right and you would not get any claim under those conditions.

Q. Where we open 20 cases and inspect the top layer and find some damage there and then go ahead and open the rest of the cases in the car and find no damage in those cases, should the carrier pay for opening all of the cases in the car and if so, why?

A. I think they should pay for it, for the simple reason that over 80 per cent of our cars move to destination without claim and the 15 per cent that we used in our previous exhibit was only where we had filed a railroad claim. I think the railroad has the edge on it all the way.

Q. Where one case of eggs out of a carload is smashed should the railroad be put to the burden of an examination of all the cases of eggs in the entire car?

A. I cannot conceive of one case being smashed and there not being other damage in the car. Certainly it is the responsibility of the railroad to pay whatever damage exists because of their handling of the shipment regardless of what effort it takes to determine that damage.

Q. Do you object to any tariff rule which limits the carriers' liability to what has been called "mass damage"? [fol. 814] A. I do not quite understand what you mean by "mass damage".

Q. I assume that after examining the top layers in these 20 cases, if you only found one or two damaged eggs you are not entitled to have the rest of the cases of eggs examined, but you are only entitled to that in case you find several eggs damaged in one case——

A. The railroads are in the business of transporting eggs and are supposed to transport them properly and if they do not transport them properly, they should pay the damage and the entire expense of the damage resulting.

If there is one egg found broken in a case, you do not know but that you are going to find 50 eggs damaged in the next case.

This claim I mentioned here, there were 600 cases of eggs and there was damage in each of the 600 cases of eggs simply because it had been given rough handling, as

far as we were able to determine from the appearance of the shipment at destination.

Q. Has Swift and Company taken any steps to bring about any more careful handling of its eggs by the carriers, in the past few months, and if so, what?

A. The only thing that we have done we thought would be beneficial would be to put a placard on each side and end of the car reading "eggs handle carefully" and yesterday afternoon, I inspected a car myself here in Washington [fol. 815] that came in over the B & O Railroad.

That car was so placarded. Both ends and both sides. I was pleased at the way the B & O handled that car down the siding.

When we opened it it looked all right, although there had been some lifting of the lids evidently by some shock.

Q. You mean buckling?

A. Buckling of the lids which broke the sealing tapes on these cases. It was a mixed car of butter and eggs. The butter was loaded in one end of the car and the eggs occupied about the her two-thirds of the car and were flush across the door opening.

Q. When we opened the tops of those cases, did you have any trouble telling that those eggs were completely undamaged?

A. We had no trouble at all.

Commr. Mitchell. Who do you mean by "we"?

The Witness: We were there, Mr. Commissioner. He was there too.

Commr. Mitchell: I noticed he wanted to get in.

The Witness: He did not get in the car however.

Commr. Mitchell: Go ahead.

The Witness: The superintendent did climb in on top of the egg cases and the eggs were loaded—the cases were loaded three high. He slid along the top of the cases to the end of the car to see if there had been any appreciable [fol. 816] shift of the load. There did not seem to be any appreciable shift and the cases seemed to be in good condition.

They unloaded a few while we were there and about an hour later I called the Superintendent and asked him

how the car turned out and he said that it turned out in perfect condition and there was no claim and it being a joint car with Baltimore it had been forwarded on to Baltimore.

By Mr. Staley:

Q. In the case of graded eggs, Mr. Ford, is it possible to tell at destination whether damage to some of those eggs occurred while it was being transported by rail or whether it occurred prior to the time the rail transportation took place?

A. I had planned to get some information into the record at Brooklyn on that point but the hearing wound up in such a hurry that I did not succeed in doing it. I went out to dinner with some of my friends the night before, and I talked the restaurant into giving me two eggs.

I brought them back and broke the ends out of them so they would leak onto a paper napkin in my room. The next evening, from about 10:30 that night until about 5 o'clock the next evening, the shell and the whites of the eggs that had been exposed by the breaking had commenced to stick to the paper napkin they were laying on.

Q. So that you can look at a broken egg and tell within certain limits when the breakage occurred, can you not? [fol. 817] A. You can certainly tell whether the breakage is 24 hours old or 2 or 3 days old.

Q. If you just find one case of eggs in a car that has some broken eggs in it and it appears to be an old break and you find no other evidence of the usual type indicating that that car has received a rough jolt on the railroad, what do you conclude?

A. Well, we assume that that has been a damage that occurred before it got into railroad service, and generally the R.P.I.A. comments on the fact, too.

Q. Now, if the damage did occur by rail, is it not pretty simple to tell that it did occur in that car by the position of the cases in which the damage——

A. If it is not dried out. On these western eggs that seem to be principally involved here, eggs moving from Chicago or West, that is a third morning or later delivery

in New York from Chicago, and if the eggs were loaded by truck from some point, either Chicago or West and then put on the railroad, they would be at least 3 days in transit by rail, and there is a pretty good chance of determining whether that damage was prior to the rail handling or during the rail handling.

Q. If that case is not located in a car where normally rail damage would occur and there is no rail damage located in the car where rail damage would be expected to occur, you practically know, do you not, that it occurred be- [fol. 818] fore the eggs were loaded on the car?

A. Yes.

Q. If the damage is only in the cases which are at the end of the car, or which are against a fixed bulkhead in the car of some sort, what does that indicate?

A. That indicates a rough shock of some sort.

Q. And the chances—would they be small or great—that that damage occurred prior to the time the eggs were placed in the car?

A. The chances would be great that it occurred after they were placed in the car.

Q. So with those two factors in mind, the fact that you can tell whether the breakage is new or old and second, you know where the damage is likely to occur when there is a rough jolt, as a practical matter, does a man have any difficulty telling whether breakage in the car occurred before or after it went into the car?

A. Time element is the only question.

Commr. Mitchell: Where does that help us, Mr. Ford? Do you maintain there is no breakage whatever on the trucking of eggs?

The Witness: No, sir, I do not.

Commr. Mitchell: Well, now, there are some broken eggs that would go into the car. If you would not put any tolerance on it, then when you got the eggs unloaded, in [fol. 819] settling the matter the man would look at this egg and say, this is more than three days old, so therefore it is on the trucks,'' how would you apportion the loss?

The Witness: I think the railroads have a duty there to not refund money on a claim to which the shipper is not

entitled. I think that is their duty. I think that would be in violation of the law if they did.

Commr. Mitchell. Assuming that there are losses and damage on trucks, before the eggs are loaded on the cars, especially where they have these long trips.

What would you suggest was the way to handle that? Would you insist that the railroads have to inspect them before they accept them?

The Witness: Mr. Commissioner, I believe that if I were in the railroad business and found that we were paying out 50 per cent of our revenue for claims, I would spend a few dollars sending people out to the shipping points that were causing me the trouble and find out what was the trouble. If he did not find it at the shipping point, I would get busy in transit. We know that since we have commenced putting these placards on the cars, that we are getting better results. I had seriously considered making that placard read "test car eggs handle carefully" because I believe that the operating personnel on the railroad are a little hesitant about rough handling of anything that they see or think has a shock recorder [fol. 820] in it.

By Mr. Staley:

Q. Mr. Ford, does Swift & Company handle both graded eggs and eggs that are re-handled and repacked at the rail-head?

A. Yes.

Q. Have you examined the records to see whether the loss and damage claims are any different with respect to the graded eggs than they are with the eggs which are re-handled and repacked at the rail-head?

A. Generally speaking they are not. Perhaps I should say, though that our truck hauls to our concentrating points are relatively small—short.

Q. What would be the effect of a 5 per cent tolerance rule suggested by the carriers?

A. Well, the effect would merely be to settle on to the shipper a responsibility of their own.

Q. That is, to make a shipper pay for damage which was caused by the railroads?

Mr. MacDonald: I am going to object to that line of examination, Mr. Commissioner, unless the questions are restricted to the shipments of Swift & Company for whom the witness is testifying.

By Mr. Staley:

Q. Now, restricted to Swift & Company, is that what the effect would be with reference to the eggs shipped by Swift & Company, is that what the effect would be [fol. 821] with reference to the eggs shipped by Swift & Company?

A. That was what I understood the question to be.

Commr. Mitchell: That would be your opinion?

The Witness: Yes.

By Mr. Staley:

Q. Do you have a further statement, Mr. Ford?

A. Yes. I have one observation I wanted to make, which was that in checking the 1948 trains it seems that the railroads paid out in claims about $100 per employee, for claims. I think that becomes a very highly important subject to the railroads, if they are paying out that much money. The record shows that they had about one million four hundred thousand employees and the claims were $135 million. It seems also that the changes that have been in the classification are all at the expense of the shipper——

Commr. Mitchell: Everything is at the expense of the shipper, is it not, Mr. Ford? Is not that the reason we want to eliminate all these claims? Some shipper has to pay, is not that right?

The Witness: That is what the railroads would have us do by these tolerance rules. They would have us assume the responsibility for the damage that is occurring in transit.

Commr. Mitchell: Well, these excessive claims that are paid in New York are paid by the shipper in the end, are [fol. 822] they not? The railroads have no place to get money other than by what the shippers pay them, is not that right?

The Witness: Oh, if you mean that, yes, that is quite true. It comes out of the revenue and must come out of the shipper because the revenue comes from the shippers, and to the extent that they do not handle eggs carefully—and they have a 50 per cent of revenue claims record—they are dissipating their own revenues and making it difficulty for the shippers. That, Mr. Commissioner, I am sure—and I know it to be a fact on account of Swift and Company—is the reason they are losing the egg business.

Commr. Mitchell: Well, just between us, if they lose the egg business in New York, they are making money. That is the thing that I do not understand about these railroads. They are anxious to carry on business that is costing them all this money. New York has cost them a lot of money.

By Mr. Staley:

Q. Mr. Ford, in addition to paying out all that money in the way of loss and damage claims, is it not true that the railroads write a lot of unnecessary and complicated letters in connection with claims involving this tolerance rule?

A. That is the reason that we put these letters into this exhibit.

Q. So that the wages or salaries of those clerks and other people who do all that investigating and figuring is [fol. 823] an additional method by which they squander their revenue in connection with loss and damage claims?

A. Well, of course, the cost of handling the claims are in addition to the amounts they pay out.

Mr. Staley: That is all.

The Witness: I started to say here, Mr. Commissioner, as to the changes in classification, they are all at the expense of the shipper. I should just like to enumerate them.

We have the 5 per cent rule. There was another rule put in note 8, Item 14601 of Supplement 36 to classification 16 which said fiber egg cases should not be loaded over 5 high.

Another rule put in said that they should not be in incomplete layers of fiber; that you could not load wood

on top of fiber or fiber on top of wood. If you had fiber cases of different manufacture and different dimensions you had to put them in separate loads.

In other words, cases must be tightly packed, and second-hand fiber cases and fillers must not be used. The fiber cases had to meet a 225 pound test versus 200 pound test and that was another change. They also changed the specification of fillers from 35 ounce to 38 ounce.

The qualification of the use of good wood or fiber cases was changed to "new wood or fiber" in the description of rehandled or re-packed eggs, or you could use good wood but you had to use new fiber.

[fol. 824] If you did not comply with these changes, your rate went up from the normal classification basis to second class.

There was also a new closure rule as the method of sealing fiber cases.

Now those were all things that the shippers had to do under the classification rules, and I see not one single thing in there as to what the carriers are going to do.

Commr. Mitchell: Go ahead, Mr. Matson.

By Mr. Matson:

Q. In the first paragraph of your testimony and in subsequent paragraphs, you used the phrase "Graded eggs" and I would like to ask you whether the term as used by you is the same as that term is used in the railroad tariffs, or is it the same as used in the grading certificates?

A. No, the term I used here refers to the rule in the classification. The railroads were feeling around for language that they could use to establish this rule and they finally came up with this and I do not offer any objection to it because they had to have something, I knew that it would conflict with commercial terms but I could not think of anything better to offer them.

Q. Just for clarification the phrase as used by you is the same as that term is used in the tariff?

A. That is right, yes.

Mr. Matson: Thank you.

Mr. Commissioner, I neglected to offer exhibit No. 35.

[fol. 825] Commr. Mitchell: Is there any objection to it being admitted?

(No response.)

Commr. Mitchell: It will be received.

(Exhibit 35, Witness Schilt is received in evidence.)

Mr. Staley: I now offer in evidence Exhibit 40, Mr. Commissioner.

Commr. Mitchell: There being no objection, it will be admitted.

(Exhibit 40, Witness Ford is received into evidence.)

The Witness: Mr. Commissioner, I would like to make one or two more statements if I may.

Commr. Mitchell: Go ahead.

The Witness: I have just taken an excerpt here to show——

Commr. Mitchell: I do not know how relevant all these things are. We are here on one thing—because the railroads have imposed on the shippers other obligations I do not think that they are to be considered here in this matter. We have other ways of proceeding with those. We are here simply on the investigation of this tolerance rule.

The Witness: Mr. Commissioner, I had the impression that the investigation, while it pertained to the 5 per cent rule on the graded eggs, I know the railroads have in mind [fol. 826] and propose to publish a rule that would make this 5 per cent rule or some kind of tolerance rule—I think that it was 6 as stated in the docket, on rehandled and repacked—I think that while the exact nature of this investigation is as to the 5 per cent rule and the classification today, they have many other ideas——

Commr. Mitchell: Well, if they publish anything new, I expect the Commission will order hearings on that.

I do not know anything about that. We only have so far this investigation before us here.

The Witness: The other comment I want to make, Mr. Commissioner, was that in 1945 the railroads handled dressed poultry, butter and eggs, 105,240 carloads and that

has gone down constantly until those commodities in 1948 accounted for 52,187 carloads.

I wanted to mention that just merely to show that when they lose eggs they lose butter and poultry also. And in 1949 for the months of May through October we shipped 449 truckloads of straight eggs.

Commr. Mitchell: Are you through, Mr. Ford?

Mr. Ford: Yes.

Commr. Mitchell: Cross-examine, Mr. MacDonald.

Cross-examination.

By Mr. MacDonald:

Q. Do you have readily available copy of the prepared statement that you used in Brooklyn?

[fol. 827] Commr. Mitchell: Well, now, was he cross-examined in Brooklyn?

Mr. MacDonald: No, sir.

Commr. Mitchell: Off the record.

(Discussion was off the record.)

Commr. Mitchell: We will have a short recess.

(Short recess.)

Commr. Mitchell: We will proceed, gentlemen.

By Mr. MacDonald:

Q. In your Brooklyn testimony, rather early in your prepared statement which you had at that time, you stated in effect that by 1941 the claim situation had become the most unimportant feature of the business. Was that true at New York as well as elsewhere?

A. I had no figures as to the general situation. I only spoke as to Swift's business. Our claims were negligble either at New York or elsewhere.

Q. At least, as to New York, then, it was the most unimportant?

A. As to the United States. I took this figure from the United States figure. I made this average from the number of cars shipped to the total cars claimed.

Q. On the top of the next page you stated that during the year 1949 you had two factors that required a change in your method of handling: The first was as to the claim situation. Does that statement apply to your traffic generally or is that dealing specifically with New York?

[fol. 828] A. Specifically to the egg business. Our claims for New York were somewhat higher than the rest of the country. To New York our claims were about a little over 18 per cent of our shipments had claims and the rest of the country had about 14, making a country average of 16 per cent.

Q. And it was the country situation, as a whole, that you were referring to as the first factor, rather than just simply New York?

A. Oh, as to the whole country, yes.

Q. You say, second is the high rates charged by the rail carriers. So that was an important consideration entirely apart from the claim feature, I take it.

A. Had the shipments moved without any claims, we still had that very serious question of the high freight rates.

Q. Down below that you speak a little of the traffic you diverted to trucks. What is your experience or what has it been with respect to truck service?

A. It has been very good generally speaking.

Q. What has your experience been with respect to claims of merchandise handled by truck?

A. We have been able to collect them because of the people that we deal with. We deal with reputable operators.

Q. Would they be common carrier trucks or contract carriers?

A. We used in the early part of 1949 both common and contract carriers and only recently we have been using [fol. 829] some exempt carriers on eggs.

Q. On the bottom of page 3 you say you have had serious claims where the cars bore unmistakable evidence of rough handling and then you refer to this car that you gave further testimony on today.

A. The car I testified about today was a different car.

Q. That is the—that is not the one——

A. The one that I was speaking of at Brooklyn was a carload of eggs.

Q. That is not the same car you refer to on the top of page 4 of your mimeographed summary, that you say was kicked so hard by a switch engine that it tore out the bumping post and so forth?

A. That was a carload of eggs.

Q. That was a different shipment?

A. That was a car some time last summer; a car of eggs.

Q. As to either one of those, you would not say that at all representative of the handling of your eggs, would you? Would it not be fair to say that those were strictly in the class of accidents?

A. Well, both of them—when a car tears out a bumping post, I think that is pretty good evidence of carelessness on the part of switching crews——

Q. It is not the sort of thing with respect to even those cars on which you have claims that happens every day, is it? [fol. 830] A. That is quite right. This is the unusual situation rather than the average.

Q. On page 6 of your statement you say that generally speaking your claims are higher at New York than they are at other points in the United States.

As I understand the record thus far, it would be correct to say that your claim experience at New York is much better than the average that has been testified to in the record thus far; is not that correct? Swift & Company's——

A. I am sure that is true.

Q. Now, if despite that fact your claims experience at New York is worse than it is elsewhere, do you have any fairly well substantiated opinion as to what you might attribute the New York Claim situation or experience to?

A. I am afraid that I do not. I spent two days down there investigating the piers, trying to find out if I could what caused the damage at New York and I could not find anything on the piers that would indicate to me there was anything going on there that should not go on. Of course there was no way for me to tell what was happening in transit. I have no ideas on it. The only thing that I can say is that when we do have the claims it is an apparent indication of rough handling some place along the line.

And I would think that from the investigation I have made, it is not rough handling on the piers.

[fol. 831] Q. Do you have any reason at all to adhere to the view advanced by the witness for Armour, that floating in the New York harbor is at all a major factor in that respect?

A. Well, I have no information along that line. We do not have enough shipments handled in that manner to form a real opinion. Perhaps I should say to you that our branch at New York is on the New York Central Railroad and normally we do not have floating operations.

Q. Mr. Ford, were you present this morning when Mr. Schilt was cross-examined with respect to his views as to when a carrier should be expected to bear the expense of inspecting eggs, and when a shipper might be expected to bear that expense? Were you present during that discussion?

A. I heard part of it, but not all of it.

Q. But on page 10 of your statement, about the middle of the first paragraph on that page, you say "If some shippers are offering eggs that are in a damaged condition and claiming for such damage from the carriers, it is perfectly obvious what the carriers must do to correct this situation." Would you tell me what you have in mind there that the carriers should do to correct that situation?

A. I think that if I were in a business that was losing me $2 million a year just because of damage to shipments, I would find out where the damage was occurring, and I think you can only find out that by analyzing each of the [fol. 832] claims and then making a test on the points that had developed in the claims, from origin to destination.

Q. Now, assuming for the moment that some study had been made and that generally speaking that study showed the claims were rather general and that the situation was fairly true with respect to origin points, would it be correct to infer from what you have said then, that your view would be that the carriers should resort to origin inspection of eggs to be sure that they were not being given eggs that were damaged at the point of origin?

Mr. Staley: I object to that, not only because there is nothing in the record to support it, but the railroads have objected to everything that has been said with respect to damage as a result of operations of the rail carrier.

Mr. MacDonald: I have not said a word about——

Commr. Mitchell: He may answer. The objection is overruled.

The Witness: I know that 85 per cent of our eggs are reaching destination without railroad claims. Now if some other shippers are offering bad eggs—eggs that are not properly packed—good eggs that are not properly packed or poor eggs that are not properly packed, that the railroads know. They have all the information as to the claims. They know how much they pay out. Their records indicate and they can tell pretty quickly who is giving them [fol. 833] bad eggs. Then the thing to do is to check those shippers and those points. It might be a little difficult at a particular time, I mean as to expense, we will say, to do a thing like that, but certainly we cannot correct an evil without trying.

By Mr. MacDonald:

Q. Now in the case of a shipment of Swift's eggs that reached New York with one case showing damage, would you contend that the expense—would you feel that the expense of inspecting the rest of the cases should be borne by the carrier?

A. The railroads are the ones who damaged the eggs and should pay the expense necessary in checking the claim.

Q. Would you say that is true then with respect to whether there was any damage in the remaining cases?

A. That is perfectly proper, but the only way to determine that there is any damage in the remaining cases would be to check the rest of the shipment.

Q. So your view would be that if the railroad caused the damage to the one case that was damaged, and there were 399 cases not damaged, the expense of inspecting the 399 cases to determine whether or not there was damage, that expense should be borne by the carrier?

A. That is correct. The railroad has so many other favorable conditions, first of all I cannot even file a claim regardless of the fact that the railroad might have damaged 100 cases, if I do not find damage in the first 20. It is [fol. 834] a give-and-take rule and the railroads certainly benefit more than the shippers by the provisions of that

20-case top layer inspection. Because we find so many eggs are damaged not just on the top layer but all the way down the end of that shipment, wherever it has hit the brace in the middle of the car or at the ends of the car.

Q. Let us step it up. Suppose we find in that same car 10 cases of eggs showing damage and 390 that do not show damage. Would you say that the expense of examining the 390 which do not show damage should nevertheless be borne by the carrier?

A. Yes, sir, because they are required——

Commr. Mitchell: He said if you found only one case you would have to bear the full expense. He testified to that.

By Mr. MacDonald:

Q. Now, Mr. Ford, to reverse the situation to consider the origin phase of this, suppose a carrier undertook to examine 400 cases of eggs in a car offered for shipment and found a certain number of shell damaged eggs in one or two of the cases in a 400-case shipment. Would you say that the expense of that investigation should be borne by that shipper or by the carrier?

A. It should be borne by the carrier, because he is the one who wants to make the investigation.

Q. Regardless of the fact that had there been no investigation the eggs would, in fact, have been shipped with a certain amount of damage in them which otherwise could [fol. 835] not be ascertained?

A. That is part of his inspection business. He inspects every shipment that comes across the freight house, dock or any other way he receives it. He has regular men on the platforms all the time to inspect shipments to see if they are in receivable condition.

Q. Did you ever know of any detailed inspection of that type to be made at all with respect to a commodity like eggs?

A. No. I merely suggested that in view of the fact that you pay out $2 million a year, I think that it would be a good investigation.

Q. But your position is that regardless of whether or not any damage was discovered at the origin, the expense of ascertaining that should be borne by the carrier?

A. Yes. The railroad has always borne any expense on inspection of shipments offered to them for shipment. I think that is proper.

Q. As I followed your position as to the unreasonableness of the 5 per cent tolerance, and so on, would it be correct to say that that is due largely to the fact that Swift & Company on the basis of experience is a high class shipper with relatively few instances of damage or compared to others generally?

A. Thank you. I think that is true. We want to ship eggs to destination that can be delivered. We do not want claims.

[fol. 836] Q. So that the objection to your rule is that since you do not contribute generally to this damage, you think that it is unreasonable to ask you to assume a share of the cost?

A. Yes. I do not want to be penalized as in connection with that 600-car shipment I mentioned in my testimony.

Q. You appreciate, of course, that a rule of this kind is designed to apply to shippers generally and not simply to Swift and Company, regardless of their degree of performance, is not that so?

A. It is designed to take care of shippers generally, but it will not take care of Swift & Company if you keep on at the rate you are going.

Q. Do you have any other suggestions, other than the origin inspection suggestion that you have made as to what the carriers might do to correct the situation, or take care of it in any other manner?

A. I made one other suggestion and that was that the carriers might get themselves 50 or 100 shock recorders and put them in with the eggs from the point from which they have grief or trouble and see if the claims are resulting from rough handling in transit, and that would probably give them a general coverage of the egg movement. If they would use that for six months or a year, they would probably be able to find out just what is causing their claims.

That is, I should not say just what is causing their [fol. 837] claims, but what I mean is, they would be probably able to find out whether it is caused through rough

handling of the cars and then they could make investigations at a few points to cover the situation.

Q. If we assume for the moment that this record shows a percentage of eggs tendered for transportation that are in some degree shell-damaged—whether that percentage is 3 or 5, is not important and leaving out Swift entirely for the moment now and just thinking of shippers generally—if this record supported any such figure as that would you nevertheless take the position that any such rule was an unreasonable rule?

A. Yes, so far as our shipments are concerned.

Q. I asked you to exclude Swift & Company?

A. Well, I think that is something the railroads would have to settle for themselves. I do not think I would care to express an opinion on what the other shippers of the country should do.

Q. Well, Mr. Ford, you are——

Commr. Mitchell: I submit he has answered the question thoroughly. You cannot force a man to give an opinion. Your sole idea is, Mr. Ford, that if you were running a business and you were losing several millions of dollars in one city, you would undertake to find out what was causing it?

The Witness: And I would not do a lot of talking before the——

[fol. 838] Commr. Mitchell: And you would not do a lot of talking?

The Witness: That is right.

Commr. Mitchell: I think your testimony is clear. Is there further cross examination?

Mr. MacDonald: I will be through in just a second, Mr. Commissioner.

That is all I have, Mr. Commissioner.

Mr. Reilly: I have a few questions.

Commr. Mitchell: Proceed.

By Mr. Reilly:

Q. Would you please turn to page 8 of your exhibit No. 37? In commenting on page 8, in your prepared statement, you said the page is self-explanatory, "However, I believe that it would be well for the carriers to give particular

attention to the claims developed in connection with those shipments that moved via the New York Central Railroad, the Pennsylvania Railroad, the Long Island Railroad and the Delaware-Lackawanna and Western Railroad."

Directing your attention to the cars delivered to the Lackawanna Railroad to destinations other than New York and vicinity, and those delivered to New York and vicinity by the Lackawanna, I find that we delivered 7 cars and that there was a claim filed against one car. How did you mean that the railroads should give particular attention to those claims?

A. This is merely a statement of fact. I offered it for the [fol. 839] benefit of the railroads. If they wanted to look into this situation and see why there were claims via certain routes or on certain shipments this would give them an indication of what we had found on our claims.

I had nothing particular in mind on it.

Q. You did not mean to imply that those particular roads were the only roads that transported eggs that had claims on them?

A. I thought they would be railroads in a particularly good condition and would want to get in and find out what was the matter.

Mr. Reilly: Thank you.

Commr. Mitchell: Thank you, Mr. Ford, you are excused.

(Witness excused.)

Mr. Knowlton: Mr. Hodkinson.

E. A. Hodkinson was recalled and testified as follows:

Mr. Knowlton: Mr. Hodkinson has already been previously sworn and testified. In order to shorten this up I believe Mr. Hodkinson will bring the claims figures up to date for New York. He has a composite figure but he has not broken the figures down by lines.

Commr. Mitchell: I think it would be helpful to the record

if you could furnish that later on. You do not need to furnish that today.

Mr. Knowlton: All right.

[fol. 840] The Witness: I have to read the figures. This I am handing you is another exhibit, but the claim payments on eggs I will have to read into the record.

Commr. Mitchell: Would you rather prepare the exhibit and send it in later on?

The Witness: We could do that.

Commr. Mitchell: That would probably be in better shape.

Mr. Knowlton: It would, because we had to get certain of the figures by telephone.

Commr. Mitchell: All right, suppose you take 10 days to prepare the exhibit and send it in and it will be filed in the docket.

Mr. Knowlton: All right.

Further direct examination.

By Mr. Knowlton:

Q. Mr. Hodkinson, will you make your statement?

A. The exhibit to be filed will show the total number of cars arriving in the New York area for the years 1948 and 1949. The number of bad order cars and the number of good order cars and the bad order cars are separated into those in connection with which claims have been filed and those as to which no claims have been filed.

In 1949, for example, we had 300 bad order cars for which claims have not yet been received. They still have some time left in which to file claims.

[fol. 841] I prepared an exhibit that shows the number of broken packages contained in carload shipments of fruits and vegetables unloaded at points shown in the exhibit, in the year 1949.

Commr. Mitchell: Should that be marked as an exhibit now?

Mr. Knowlton: It is offered for identification as Exhibit 41.

Commr. Mitchell: All right. It will be so marked.

(Exhibit 41 Witness Hodkinson is marked for identification.)

Mr. Matson: Mr. Commissioner, I notice this deals with packages of fruits and vegetables. I wonder if this is a mistake.

The Witness: No, it is not a mistake.

Mr. MacDonald: That is not what he is talking about now.

Mr. Matson: I wonder if it is pertinent.

Commr. Mitchell: Let him go ahead and we will see what he has to say.

The Witness: Fruits and vegetables are handled in practically the same way as dairy products and many of these carloads of fruits and vegetables are handled at exactly the same piers at which eggs are handled and the purpose of this exhibit is to show the number of package cars that were unloaded at various unloading points in official territory at which the railroads maintain inspection agencies, the [fol. 842] number of broken packages in each of those cars and the average number of broken packages per car.

Now, I am calling attention to the fact that at New York the number of broken packages per car, that is the average number is 28.45 as contrasted with Philadelphia 41.86 and Baltimore 33.02, and Providence 29.60 and the New York figure is very little over the average figure of 26.18 average broken package per car.

I can think of no commodity that comes so close to eggs in so far as the physical handling in New York is concerned than do these fruits and vegetables. This demonstrates that as far as handling is concerned, as typified by the average number of broken packages per car, New York is in a better situation than other parts of the country, whereas the reverse situation is true in regard to eggs.

Commr. Mitchell: What conclusion do you draw from that?

The Witness: It is not a matter of physical handling so far as eggs are concerned in New York as contrasted with other points.

Commr. Mitchell: What is it, then?

The Witness: That is what we are still groping around to find out.

Exam. Mullin: According to the testimony heard here today it seems to indicate that the cars of eggs handled to New York receive rougher handling than cars of eggs [fol: 843] shipped to other points.

Is that the conclusion we should draw from your testimony?

The Witness: No. I think you should draw the contrary. We handle the shipments of eggs into New York just as we do to other points.

Commr. Mitchell: That is not true. You unload the eggs at New York.

The Witness: We unload the fruits and vegetables at New York also.

Commr. Mitchell: Are they floated across?

The Witness: Yes.

Commissioner Mitchell: Do you unload them at Philadelphia?

The Witness: Eggs?

Commr. Mitchell: Yes, sir.

The Witness: No, I think not. We unload some fruits and vegetables at Philadelphia. Philadelphia and New York are the only points we unload the fruits and vegetables.

Commr. Mitchell: Do you think fruits and vegetables are a fair comparison with eggs?

The Witness: Yes.

It is the same floating situation and the same piers handle both commodities.

Commr. Mitchell: But they are in different cases, are they not?

The Witness: Yes, sir, they are in different cases.

[fol. 844] Commr. Mitchell: Your experience in fruits and vegetables in New York is about average with other cities?

The Witness: That is not true as to the claims on eggs.

Commr. Mitchell: But your losses on fruits and vegetables are pretty heavy, are they not?

The Witness: Yes, sir, but they are not more noticeable at New York as to fruits and vegetables than they are at any other points.

Mr. Knowlton: May we offer Exhibit 41, please?

Commr. Mitchell: Any objection?

(No response.)

Commr. Mitchell: It will be admitted.

(Exhibit 41 Witness Hodkinson is received in evidence.)

Commr. Mitchell: Is that all?

By Mr. Knowlton:

Q. Do you want to say anything further about the freight claim figures that are to be put in later?

A. The freight claim figures as reported to the A.A.R., are as I have explained previously, not related to any particular year's revenues and cannot be related to any particular year's revenues. The claims were not paid and were not charged out to the claim account immediately, so they have to go through the process of investigation and the A.A.R. records show that there are millions of dollars being carried in suspense and it is not until the investigation as to the re- [fol. 845] sponsibility of the dividing of the claim between the various railroads in the case of Joint Hauls, has been completed that the claim is charged to the claim account.

It follows then that the claim payments as reported in the statistics to the A.A.R. for the year 1949, for example, would only contain very few claim payments in connection with shipments moving in 1949.

They would contain claim payments and shipments moving in 1948 and some shipments moving as far back as 1947 or 1946.

Commr. Mitchell: You are over a year behind in the payment of your claims?

The Witness: No, it is not the payment of the claim, Mr. Commissioner; it is the allocation of that claim payment to the account.

Commr. Mitchell: I see.

The Witness: That is the thing that is behind.

Now, effective January 1 of this year, in order that the Commission and ourselves or the parties may be more fully informed, we are undertaking to maintain more current statistics at New York City or the New York area, that will show the total revenue from all shipments containing eggs and the claims will be posted against these particular waybills or freight bills and at the end of a given period

we will be able to do for the year 1950 just as we did [fol. 846] for 1947—show precisely how much of the freight revenue derived from the transportation of eggs in 1950 has been paid out in claims against those same shipments.

That, as far as I know, would be the only case where we have made an absolute check against the freight revenue of the claims paid.

Mr. Ford did it for Swift and Company and I did it for the year 1947, but all other statistics where we tried to compare freight claim payments against revenue means we are applying the freight claim clearances in a given year against the revenue, and the shipments for the particular revenues might not be cleared for another two or three years.

Mr. Knowlton: That is all that we have, Mr. Commissioner.

Commr. Mitchell: Cross-examination.

Cross-examination.

By Mr. Matson:

Q. Do the same unloaders in New York unload eggs as unload these fruits and vegetables reflected in your exhibit 41?

A. Well, it is the same type of unloaders, Mr. Matson.

Q. Not the same men, though?

A. Not necessarily the same men, although these men are not restricted to eggs. Generally speaking the egg unloading is performed in the early hours of the morning and the gang that is unloading eggs at that time possibly do not have any other perishable freight to unload.

[fol. 847] Q. Do they use the same type of equipment?

A. Oh, yes.

Q. And handle them the same way they do lettuce and other fruits and vegetables?

A. Yes, they come down the gangplank and have retarders and different numbers of cases at different piers, but it is all about the same general physical handling and the same type of equipment with the same type of man.

Q. When that type of handling is applied to fruits and vegetables, you average 28 broken packages per car of

fruit and vegetables. You mean that that breakage occurs on the New York piers?

A. Oh, no.

Q. That is cumulative breakage?

A. That is cumulative breakage that comes out of the car. As we unload the car we find that average number of packages in bad order. Most of them by the way are reconditioned.

Q. How much of that breakage would you say occurs right at the New York piers?

A. Oh, I would not hazard a guess as to how much of it goes into piers.

Q. Well, would you say that most of it occurs in the line-haul movement or the movement up to the pier including the switching on the Jersey side?

A. That is the condition in which the packages are when [fol. 848] the car is opened, generally speaking.

As they start unloading they might loosen up a slat or something of that kind and put it on one side.

Q. Would you say that any of this average of 28 packages of commodities broken per car is done in the process of unloading from the time the car float arrives at the pier until the packages are laid down on the pier floor?

A. Possibly some of them. As the piles get pretty high these crates of carrots that weigh 130 pounds, as you bring that down to the floor of the car you might jar the nails loose and that would be determined a bad-order package.

Mr. MacDonald: But do you actually know?

The Witness: No.

By Mr. Matson:

Q. But you have observed the unloading of these cars; you have been down to the piers?

A. That is right. And I have given you an honest answer, sir. I said you cannot attribute much of it to the actual handling of it on the piers.

Q. Would you say these unloaders do exercise some degree of care in unloading the fruits and vegetables and in spite of that they do break up a few crates in the process?

A. Yes. If you have seen some of this wet wood you will see how difficult it is to keep some of the nails in this wet

wooden crate, especially in view of the heavy bulge in the crates that we have tried to get reduced against the protest [fol. 849] of the Department of Agriculture.

Q. There is no bulge in the egg crate?

A. No, sir.

Q. And the same sort of handling is applied to eggs as is applied to these fruits and vegetables?

A. Even more careful handling.

Q. A little bit more careful handling?

A. Yes, sir.

Mr. Matson: That is all.

Commr. Mitchell: Is there anything further?

Mr. Knowlton: That is all.

Commr. Mitchell: Thank you, you are excused.

(Witness excused.)

Commr. Mitchell: That closes the session today. I want to thank you for your attention and courtesy. We will continue this case. There is a great demand for hearings on the West Coast and whether the Commission will authorize it or not, I do not know, or when it will be held if they do, I do not know. I frankly say that I started in this case in 1947, and there is a reason—there must be a reason—why the railroads are paying excessive claims. To me that is a job for the railroads, to ascertain that reason. There must be a reason—why the railroads are paying excessive claims. To me that is the job of the railroads—to ascertain that reason.

[fol. 850] There must be some way to do it. You cannot afford to pay out the amount of claims that you are paying out now.

Somebody mentioned diverting to trucks. You would be better off if this traffic were diverted to trucks, and that situation is what we have got to try to keep at until we can find the solution to the problem.

Just because you do not break open as many orange crates—what I have seen about your fruits and vegetables the claims are pretty heavy also; whether the situation is as bad as eggs I am not prepared to say, because I am not familiar with it.

I do hope that you gentlemen will continue to make some efforts to see that this situation is eliminated.

[fol. 662] **Proceedings—August 1, 1950**

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 30030

In the Matter of SPECIAL REGULATIONS—EGGS

Room G-41, Post Office and Courthouse Building,
Los Angeles, California

Tuesday, August 1, 1950.

Met, pursuant to adjournment, at 9:30 a. m. Before:

Richard V. Mitchell, Commissioner

APPEARANCES

WALTER D. MATSON, Office of Solicitor, U.S. Department of Agriculture, Washington 25, D. C., appearing for the Secretary of Agriculture of the United States of America.

LEON SCHILT, Transportation Rates & Services Division, Production and Marketing Administration, U. S. Department of Agriculture, Washington 25, D. C., appearing for the Secretary of Agriculture of the United States of America.

J. P. CANNY, 1336 Midland Building, Cleveland 15, Ohio, appearing for Respondents.

J. EDGAR McDONALD, 466 Lexington Avenue, New York 17, New York, appearing for Respondents.

WILLIAM F. ZEARFAUS, c/o Pennsylvania R. R. Company, 1740 Broad Street Station Building, Philadelphia, Penn[fol. 663] sylvania, appearing for Respondents.

R. D. RYNDER, 218 North Hobart Boulevard, Los Angeles 4, California, appearing on behalf of Pacific Dairy & Poultry Association, Respondents.

CHARLES A. ROOT, 314 State Capitol, Salt Lake City, Utah, appearing for Public Service Commission of Utah.

JOHN P. STALEY, 4115 South Packers Avenue, Chicago 9, Illinois, appearing on behalf of Swift & Company, Respondents.

A. J. STILLING, 1416 Dodge Street, Omaha 2, Nebraska, appearing on behalf of Union Pacific R.R. Co., Respondents.

W. S. JENSEN, 143 Liberty Street, New York 6, New York, appearing on behalf of Railroad Perishable Inspection Agency.

ROY L. MCDONOUGH, P. O. Box 1620, Salt Lake City, Utah, appearing on behalf of Utah Poultry & Farmers Co-operative, Respondents.

T. R. PHILLIPS, 606 South Hill Street, Los Angeles, California, appearing on behalf of Western Growers Association, Interested Party.

DRUE WILLARDSON, 364 South Central Avenue, Los Angeles, California, appearing on behalf of Utah Poultry & Farmers C--operative (as Sales Representative).

W. G. O'BARR, 1151 South Broadway, Los Angeles 15, California, appearing on behalf of Los Angeles Chamber of Commerce, Interested Party.

[fols. 664-665] ROBERT C. NEILL, 707 West 5th Street, Los Angeles 14, California, appearing on behalf of California Fruit Growers Exchange.

P. J. ARTURO, 2691 East Vernon Avenue, Los Angeles 54, California, appearing on behalf of Swift & Company, Respondents.

HENRY D. GREENE, Executive Secretary, Room 256, 1304 East 7th Street, Los Angeles 21, California, appearing for Pacific States Butter, Eggs, Cheese and Poultry Association, Dba Pacific Dairy and Poultry Association.

E. K. SLUSSER, Traffic Manager, Poultry Producers of Central California, San Francisco, California.

[fol. 666] PROCEEDINGS

Comm. Mitchell: Will you come to order.

This is Docket No. 30030, Special Regulations—Eggs. This is the time, 9:30 a. m., August 1st, the date and the hour for this hearing in Los Angeles, California, U. S. Postoffice and Courthouse Building, Room G-41, which has been transferred from Room 810.

The first thing we will do is have the appearances entered. We will enter appearances here at this time.

Mr. Canny: J. P. Canny, 1336 Midland Building, Cleveland 15; Ohio, for respondents.

Mr. McDonald: J. Edgar McDonald, 466 Lexington Avenue, New York 17, New York, appearing for respondents.

Mr. Zearfaus: William F. Zearfaus, 1740 Broad Street Station Building, Philadelphia, Pennsylvania, appearing for respondents.

Mr. Rynder: R. D. Rynder, R-y-n-d-e-r, appearing for Pacific Dairy & Poultry Association.

Mr. Root: Charles A. Root, 314 State Capitol, Salt Lake City, Utah, appearing for the Public Service Commission of Utah and the Utah Poultry and Farmers Cooperative at Salt Lake City.

Mr. Matson: Representing the Secretary of Agriculture of the United States, Walter D. Matson, M-a-t-s-o-n, Office of the Solicitor, United States Department of Agriculture, [fol. 667] Washington 25, D. C.; and Leon Schilt, Transportation Rates and Services Division, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C.

Mr. Staley: John P. Staley, 4115 South Packers Avenue, Chicago, Illinois, representing Swift & Company.

Mr. Phillips: Thomas R. Phillips, representing the Western Growers Association, 606 South Hill Street, Los Angeles, an interested party.

Mr. O'Barr: W. G. O'Barr, appearing for the Los Angeles Chamber of Commerce, 1151 South Broadway, Los Angeles 15, California, an interested party.

Mr. Neill: Robert C. Neill of the California Fruit Growers Exchange, 707 West 5th Street, Los Angeles.

Comm. Mitchell: Is there anyone else who desires to enter his appearance?

Mr. McDonough: R. L. McDonough, Traffic Manager, Utah Poultry & Farmers Co-operative, Post Office Box 1620, Salt Lake City, an interested party.

Mr. Slusser: Mr. E. K. Slusser, Traffic Manager, Poultry Producers of Central California, San Francisco.

Comm. Mitchell: Are there any other appearances? Does anyone else desire to enter an appearance?

Mr. Willardson: Drue Willardson, 364 South Central Avenue, Los Angeles; Sales Representative, Utah Poultry [fol. 668] and Farmers Co-operative, an interested party.

Comm. Mitchell: Is there anyone else that desires to enter his appearance?

(No response)

Comm. Mitchell: There is no one else that desires to enter an appearance at this time.

So that we will have an idea of just what we are confronted with, have the railroads any witnesses that they desire to introduce at this hearing?

Mr. Zearfaus: We have no witness at this hearing, Mr. Commissioner.

Comm. Mitchell: Does the Department of Agriculture have any witnesses?

Mr. Matson: Yes, sir, we have two short witnesses.

Comm. Mitchell: And Mr. Rynder?

Mr. Rynder: We have four or five witnesses.

Comm. Mitchell: Mr. Root?

Mr. Root: Just one.

Comm. Mitchell: Are there any other parties that desire to offer witnesses at this hearing?

(No response.)

Comm. Mitchell: We will go along on that basis then. Since they do not have any, you may introduce your first two witnesses, Mr. Matson.

[fol. 669] HENRY G. F. HAMMON was sworn and testified as follows:

Direct examination:

Comm. Mitchell: Give your name, position and address to the reporter.

The Witness: My name is Henry G. F. Hammon.

Mr. Rynder: May I ask a question, before the hearing starts?

Comm. Mitchell: Certainly.

Mr. Rynder: It is not our intention at this time to make any opening statement. Our position on the facts of record and the law will be disclosed in our brief, of course. We are concerned simply with one point. It will not be possible for the Pacific Dairy and Poultry Association to send its witnesses to Chicago, or even its attorneys, for the hearing in I. & S. Docket No. 5792. It seems to us that that is an integral part of this case if we

read the record that grew out of these hearings, and is unmistakably a part of it. We would like to know whether the testimony to be offered here may be considered as a part of the record in the suspension case, I. & S. 5792.

It just occurs to me that perhaps the railroads would be quite as desirous of that result as we are, because it seems to me that it might be quite as desirable from the railroads' standpoint as from ours to have that done; because [fol. 670] if that were not done, it seems to me the railroads, in effect, would have to duplicate in the suspension hearing a very large record, with all the records that have already been made in this case.

Comm. Mitchell: The railroads?

Mr. Zearfaus: Mr. Commissioner, the railroads have no objection to having the record in this investigation case, at least so far as the eastern railroads are concerned, represented here: that is, the full record in Docket 30030 made part of the record in the investigation and suspension proceeding.

Mr. Rynder: Then, your Honor, may that be stipulated as of record?

Comm. Mitchell: As I understand it, the Commission has a perfect right to use the record in 30030 in the I. & S. case. It would so desire and it would be very apparent that it will so desire; but I do not want to make any stipulations at this time, and I will reserve ruling upon that until later on.

I have been advised that we have a perfect right to so use it, and of course, frankly speaking, from my point of view that is what we would do. 30030 would be a part of the I. & S. case. It would be ridiculous to go through all of the evidence again. We may even combine these two cases. At least, if we do not do that now, to be frank with [fol. 671] you, the railroads would have to, as I understand it, assume the burden here. We thought it would be a lot fairer to the industry as a whole to have that hearing in Chicago, where it would be more represented, and more parties interested.

Mr. Root: May the Commission please, we support Mr. Rynder's motion.

Comm. Mitchell: I take it that the Secretary of Agriculture does not have any objection to that?

Mr. Matson: We have no objection, your Honor. We expected that the railroads would make that motion themselves, as being primarily in their interest to do that.

Comm. Mitchell: All right. Call your first witness then, Mr. Matson.

Were there any other statements that anybody desired to make?

(No response.)

Comm. Mitchell: You go ahead, Mr. Matson, then.

The Witness: I am chief of Dairy & Poultry Inspection and Grading Division, Production and Marketing Administration, Washington.

By Mr. Matson:

Q. That is within the Department of Agriculture?

A. Department of Agriculture; that is right.

Q. You are the same Mr. Hammon who testified at the Chicago hearing in this proceeding?

[fol. 672]. A. Yes.

Q. In your inspection and grading of eggs, is it customary or have your inspectors done this, inspect a bad order of shipments before they have been reconditioned?

A. Yes, we have, Mr. Matson, when we receive any request for inspection and grading. The type of service which the applicant desires is the type of service which we of course render, in conformity with our regulations, and we have done that type of inspection.

Q. By and large has that been the type of inspection or service rendered, or has the regular grading after reconditioning been the rule where a bad order of shipment is involved?

A. Would you repeat that question, please?

Q. I will restate it. Where a bad order of shipments has been involved, that is shipments which have been subject to transit damage, has it been the general rule that your inspectors would inspect those shipments before or after the cases of eggs have been reconditioned?

A. The general rule has been that we inspect them before reconditioning.

Q. Before?

A. Reconditioning.

Mr. Zearfaus: This is a point of origin that you are talking about now?

[fol. 673] Mr. Matson: No.

The Witness: It is after transit damage, which would contemplate——

By Mr. Matson:

Q. That was my next question. What do you mean by transit damage?

A. Well, it could be either rail or motor. This is a very general question in regard to their operations.

Comm. Mitchell: He just asked the question whether they inspected them before or after they reconditioned them. Go ahead and answer if you can, Mr. Witness.

Mr. Matson: I believe he has answered, Your Honor.

By Mr. Matson:

Q. Have you been requested to perform this service by the railroads at destinations?

A. No, sir.

Q. Would you be in a position to perform that service if you had been requested to do so?

A. Yes.

Q. Now in regard to state inspections, are they conducted the same as the Federal inspections? If not, explain what the difference is.

A. Where we utilize state inspections, Mr. Matson, they are handled in accordance with the regulations of the Department, in conformity with cooperative agreements, which we have with the various states, to utilize their personnel, so that the inspection would be handled on the same basis [fol. 674] as we handle them Federally.

Q. The same standards are involved?

A. The same standards, the same regulations, and the procedure there employed.

Q. During the course of the inspection do your inspectors remove the leakers from a case which is being inspected?

A. Yes, we do.

Q. How about rotten eggs, mouldy eggs, and eggs with

so-called "meat spots"? Do you remove those if you run across them?

A. No, we don't, because those eggs, of course, are sound-shell eggs. For that reason they are retained within the lot.

Q. Why do you remove the leakers?

A. Because of the fact that they are of course broken, and the fact that they would cause increased damage over that which may already be present, and therefore we take them out.

Q. Have the railroads ever inquired of you, or to your knowledge of the Department of Agriculture, whether it would be possible to provide inspectors to inspect all egg shipments at point of origin?

A. Not to my knowledge, Mr. Matson; they have not made such inquiry of us.

Q. Would if be possible for you to provide inspectors to inspect all shipments of eggs at point of origin?

A. I would say yes, provided we had sufficient notice in [fol. 675] advance so that we could make the necessary arrangements for the employment of an adequate number of personnel to do the job.

Q. Would you care to estimate the increased number of inspectors you would have to have in relation to the number that you now have?

A. It would be a wild guess. At the present time we have under license to grade dairy and poultry products approximately 2,000 people over the country. The last estimates we had we graded, of a total number of eggs packed over the country, approximately ten per cent; so from that you could probably deduce the number of people we might have to have if we graded all of the eggs, or examined all of the eggs, which were packed.

Q. As many as ten times as many inspectors?

A. Could be.

Comm. Mitchell: Are these 2,000 men on the payroll of the United States government?

The Witness: Yes, sir.

Comm. Mitchell: You would not advocate the government hiring 20,000 men to inspect eggs, would you?

The Witness: I would like to point out, Mr. Commis-

sioner, that the service that we render, of course, is voluntary, and to the extent that we utilize these people the cost of the services is billed back to the industry. We don't re- [fol. 676] ceive appropriations for our work.

By Mr. Matson:

Q. It is a completely self-sustaining program?

A. It is a completely self-sustaining program.

Q. Now if this enlarged program were put in effect, would it be necessary to open all the cases of eggs in a shipment?

A. No, sir. We would handle those inspections in the same manner that we handle them now, on the sample basis.

Q. Have the railroads ever inquired of you, or to your knowledge of the Department of Agriculture, whether it would be possible to provide inspectors to inspect all egg shipments at destinations?

Comm. Mitchell: Where is this line of evidence pertinent to any issue in this case?

Mr. Matson: We have proposals, your Honor, to use the Department certificates as a basis——

Comm. Mitchell: Evidence in this case?

Mr. Matson: The status of the proposal is rather nebulous. An exhibit was offered but has not been received, and we are anticipating that it might be received, and this evidence relates somewhat to that.

Mr. Zearfaus: I am afraid that Mr. Matson has in mind the suspended tariff, Mr. Commissioner, although at the New York hearing, you will recall that there was some testimony introduced as to the intention to file such a tariff. [fol. 677] Subsequent to that a tariff was filed, and has been suspended.

Mr. Matson: That is correct, your Honor, and I also refer to Exhibit 28, which contains the same subject matter.

Comm. Mitchell: Now you may go ahead. I seriously doubt as to whether this is material to any issue in this case.

Mr. Matson: I won't take much time on it.

Comm. Mitchell: All right.

By Mr. Matson:

Q. Did you hear the question?

A. No, sir.

(Question read.)

The Witness: No, sir, they haven't.

By Mr. Matson:

Q. Would it be possible to provide the inspectors to inspect all shipments at destination?

A. Yes, it would.

Q. More or less so than at the origin point?

A. It would be more possible at destination than it would at origin.

Q. Now in your process of grading and inspecting eggs, are checks and leakers counted in the same way?

A. Checks and leakers are included in the total tolerance, but they are counted separately.

Q. At the Chicago hearing you stated that it takes approximately three hours for one man to inspect a carload shipment of eggs on the basis of a 15-case sample. Now if the process were speeded up, so that it took only an hour [fol. 678] and a half or two hours, what would be the effect on the results of your inspection?

A. It would be likely to create situations where you would not do as adequate a job as you would in the longer length of time.

Q. Do you mean by that that he would not find all the damaged eggs, or the eggs of less than quality?

A. That's right.

Q. Could you give us a practical classification of the different types of examinations which might be given a case of eggs?

A. Well, you would probably have to arrive at a basis of classifying them in a broad category of the types of inspection. We will say your Type A inspection, for example, might be the type of inspection which we would render, which would be a full inspection, meaning candling, clicking the eggs, determining the extent of breakage, or what have you; in other words a full inspection. Then

you might take the type of inspection that the industry would apply——

Comm. Mitchell: Isn't this all in the record now?

Mr. Matson: No, sir.

A (Continuing:) —which you might classify as B, which would be variable, of course, depending upon the individual making the inspection, or the firm making the inspection; and then you might take a third category, which would [fol. 679] be the type of inspection that is now performed at points like New York, where they simply examine for damage, without any further attempt to break down the findings beyond that point. There you would have, possibly, three broad categories of inspection which you would designate as A, B and C, for the purposes of this discussion.

By Mr. Matson:

Q. Now in the Class A inspection, you have already stated that it takes three hours to perform that, and the leakers are removed?

A. That is correct.

Q. In the Class B inspection what sort of eggs are removed from the cases in that?

A. Well I would say, Mr. Matson, that would depend entirely upon, as I said a moment ago, the individual or firm performing the inspection. You might conceivably find firms that would do a job quite as thorough as the ones that we do; and then you might move downward from that to a point where you get a very poor job, where they would make a very casual inspection, and on the basis of that would arrive at a conclusion with regard to their findings.

Q. Now, would they remove the leakers?

A. Well, I imagine they would pretty nearly have to if you are going to make that kind of inspection.

Q. In this commercial grading process, would they also remove other shell damaged eggs?

[fol. 680] A. Yes, I think they would.

Mr. Zearfaus: Who would?

The Witness: The firm, or the particular industrial unit that was doing the job. They would probably do a full job

of candling, and in the process of candling they would remove all the eggs that were damaged.

Mr. Zearfaus: I think that we are getting into the realm of speculation now, as to what somebody would do.

Comm. Mitchell: I think you ought to testify to facts that you know about.

By Mr. Matson:

Q. Well, Mr. Hammon, have you done this commercially yourself?

A. Oh, yes.

Mr. Matson: He has been in this business for years.

Comm. Mitchell: I know, but he is testifying now as to what somebody might do in this inspection that he is talking about. Limit it to your own knowledge.

By Mr. Matson:

Q. What you have been speaking about in the Class B category is industrial or commercial grading as you have known it in your experience?

A. That is right.

Mr. McDonald: Mr. Commissioner, I would like to be clear about this. I understood at the outset that this witness would testify as to what the practice or experience of the Department of Agriculture inspector would be, and I [fol. 681] gather at this——

Comm. Mitchell: Let us go ahead. I can't see where this is material at all to the issues in this case.

Mr. Matson: We will get to the point.

Comm. Mitchell: This hearing, Mr. Matson, is for the benefit of the western people, not for the Department of Agriculture people. We came out here to California on the demands of the Pacific Coast, and that is what we want to hear. We can always hear these Department men at different hearings in the east. I understood that your witness would take a short while. Proceed.

Mr. Matson: All right, sir.

Comm. Mitchell: We are going to be in Chicago. You can have him there. But go ahead.

Mr. Matson: All right, sir.

Comm. Mitchell? I just want it understood that this is a Pacific Coast hearing. We did not come here for the purpose of hearing Department of Agriculture men.

By Mr. Matson:

Q. Now in regard to the speed of handling, how do the Class A, B and C handlings compare?

A. Progressively less time will be consumed from A to B to C.

Q. Now if a car of eggs were given a Class A inspection at origin and a Class A inspection at destination, would the resulting inspection certificates afford a practical basis for ascertaining the shell damage sustained between the [fol. 682] times of the inspections?

A. Very definitely.

Q. If, on the other hand, a Class B inspection, or Class B grading were given at the point of origin and a similar Class B grading were given at destination, would that afford a practical basis for ascertaining the shell damage sustained between the times of the gradings?

A. To the extent that an adequate job was done, yes.

Q. And, similarly, if a Class C inspection were given at both origin and destination, could you by comparing the results of those inspections, ascertain practically the measure of shell damage sustained between the times of the inspections?

A. No, I would not say so.

Q. And why not?

A. Because you are not making a careful enough check of the lot of eggs in question to determine the extent of breakage, or whatever it might be that you are looking for.

Q. How about a Class A inspection at origin and a Class B inspection at destination?

A. A Class A at origin would be our full inspection; a Class B, at what we call here Class B at destination, might not be a full inspection. To that extent it would not reflect——

Q. It would not entirely reflect the——

A. It would not entirely reflect the possibility of damage in handling from whatever it might be.

[fol. 683] Q. In the case of a Class A inspection at origin

and a Class B inspection at destination would that show the full measure of shell damage sustained between the times of the inspections?

A. I would not say so.

Q. And why not?

A. Because there you have two extremes of examination, one at destination a very casual examination, you might say, and the one at origin a very careful examination.

Q. Would it be a reasonable and practical approach to use a Class A inspection at origin and a Class C inspection at destination?

A. Will you please read that question?

Q. Would it be a reasonable and practical approach to use a Class A inspection at origin and a Class C inspection at destination?

A. It might be practical, but it would not be reasonable.

Mr. Matson: That is all. Thank you.

Cross-examination.

By Mr. Canny:

Q. What kind of inspections does the Department have?

A. When you say "what kind"——

Q. What kind of inspection do you utilize, or does the Department utilize?

A. We utilize the Class A that I was talking about, full [fol. 684] inspection.

Q. Is that all? Is that the only kind of inspection you have?

A. I don't know just what you mean.

Q. You were talking about three different classifications of inspection: A, B, and C. If I understand your testimony correctly, your Department uses only Class A; is that it?

A. That is right.

Q. Who uses the B and C?

A. Well, it would be on the basis of what I have stated a moment ago. The B type of inspection would be the type of inspection used by industry, and C——

Q. Do they use that now?

A. Yes.

Q. But that is not as good an inspection as your Department uses?

A. I stated it could be the full extreme. It could be as good as ours, but it could be poorer than ours.

Q. What is the difference between your Class A inspection and an industry Class B inspection?

A. An industry Class B inspection, they would candle all eggs in every case.

Q. Both at origin and destination?

A. Yes, that is right.

Q. And do they do that?

A. Some do and some don't.

[fol. 685] Q. How about Class C?

A. The Class C inspection or grading is performed by this joint inspection service which is maintained in New York by the railroads, which is a determination to uncover at present any damage that might have occurred in the handling of the eggs.

Q. If all the shippers, or rather, the industry had a Class A inspection at point of origin, in your opinion would there be less egg damage at point of destination?

A. That would hinge entirely, sir, upon the type of job that was done before our inspection was made at the point of origin. Our inspection simply determines the degree of accuracy with which the job has been done in the first place, so that you would have a knowledge of the extent of any condition that might exist at the time shipment was made.

Q. Well, when you make a Class A inspection at point of origin you remove all leakers; is that it?

A. Yes, sir.

Q. And nothing else?

A. No, sir.

Q. Even if that were done in each and every instance, you would necessarily reduce your damage at point of destination, wouldn't you?

A. I don't think I would be able to answer that specifically, sir, because that would hinge on a number of things, possibly.

[fol. 686] Q. Well, it would reduce your claims at least, wouldn't it?

A. Conceivably, if you remove eggs, or limit the number of eggs that are not of sound shell character.

Q. Wouldn't it be reasonable to assume that you would have less damage at destination if all your leakers were removed at point of origin?

A. I don't know whether I could say that you could assume that.

Q. Well, you made a lot of other assumptions. Could you make this one?

Comm. Mitchell: He asked you a question that you can answer yes or no. If you can't answer it, say no.

The Witness: Will you read the question?

(Question read.)

The Witness: Yes, I would say that it would be.

By Mr. Canny:

Q. But when industry or the shippers make what you call a Class C inspection, they don't remove all the leakers, do they?

A. They just couldn't.

Q. At point of origin I am talking about.

A. They would not see all the eggs.

Mr. Staley: I object to that as based upon facts that are not in the record. There is no evidence that any such inspection is ever made at origin.

Mr. Canny: I think the witness stated that they do make [fol. 687] the different inspections.

By Mr. Canny:

Q. Isn't that correct?

A. I didn't state, however, that they were made at origin.

Q. What kind of inspections are made at origin?

A. The type A inspection is made at origin.

Q. That is the only type that is made at origin?

A. And type B.

Q. You are talking about your Department?

A. I am talking about the Department of Agriculture, and I am talking about the type of inspection that is handled by the industry itself.

Q. They don't have any type C?

A. Not to my knowledge.

Q. Then what you were talking about when you talked about a Type C inspection related to destination inspection?

A. I was talking about destination inspection.

Q. Then all of your testimony where you referred to a Type C inspection related to destination inspection?

A. That is right.

Mr. McDonald: I have just one or two questions, if I may.

By Mr. McDonald:

Q. Mr. Hammon, do I understand your testimony to be, in effect, that the Department of Agriculture at point of origin performs only a so-called Class A inspection?

A. Generally we do. We would of course perform an inspection for condition only.

[fol. 688] Q. Now, you say "we would". Do you at the present time, or have you in the past?

A. We do, and have in the past.

Comm. Mitchell: You don't perform a Class A inspection on every car of eggs that you are going to ship, do you?

The Witness: Not on every car that is shipped, but on cars for which we have a request for inspection.

By Mr. McDonald:

Q. Now then, do I correctly understand that it is your contention that industry, as distinguished from the Department of Agriculture, performs a so-called Class B inspection at points of origin?

A. That is correct.

Q. And that they do not perform a so-called Class A inspection?

A. I didn't say that.

Q. I asked you if that is what you were saying in effect?

A. No, no, no. They do perform Class A as well as Class B.

Q. Is that generally true?

A. I wouldn't say so.

Q. Didn't I understand you to testify previously that from your standpoint industry performed what you re-

garded as a Class B inspection, as distinguished from the Department's Class A?

A. Well, we should clarify this point here by stating that inspections, that the word "inspection" in itself does not imply in every instance a full and complete handling of [fol. 689] any lot of eggs. When we are talking about inspection, or when I talk about inspections, I talk about the drawing of a sample, a representative sample to determine, on the basis of that representative sample, the general condition of the lot of eggs in question.

Q. Mr. Hammon, the only thing I want to get clear in my mind and on the record is what in your opinion the difference, if any, is between a so-called Class A inspection by the Department and a so-called Class B inspection by industry generally.

A. I thought that I had that point clear, but perhaps I didn't. The difference, as I see it, would lie in the fact that a Class A inspection, which would be the type that we would perform, would be uniformly applied wherever it is done. The Class B inspection as it might be performed by industry itself, could be as good as ours, or it might vary from that to a lesser degree, depending upon the individual who is doing the job.

Q. If it was as good as yours it would be, generally speaking, a Class A inspection?

A. That is right.

Q. Either way?

A. That is right.

Q. Do you have any real opinion as to whether or not the so-called Class A inspection, which the Department makes, is inferior to or is superior to the so-called Class B [fol. 690] inspection that you have been talking about?

A. I would have to answer that one indirectly in saying——

Comm. Mitchell: If you can't answer it yes or no you should not answer. If you don't know how to answer it, say no.

The Witness: Mr. Commissioner, it is not possible to answer it with a yes or no.

Comm. Mitchell: He asked you whether in your judgment it was better, or equal to.

Mr. McDonald: I asked him in effect if it was his opinion that the Department's Class A inspection generally was superior to the Class B inspection of industry, which he has been discussing.

The Witness: I still maintain, Mr. Commissioner, that I can't answer that question——

Comm. Mitchell: Then you can't answer it. It seems to me it can be easily answered yes or no. Is it or is it not?

The Witness: It is not easily answered that way, because there are factors involved there that are significant from the answer that I would have to give.

Comm. Mitchell: Do you have an opinion as to whether it is or not?

The Witness: I have an opinion. It would be a purely personal one.

By Mr. McDonald:

Q. That is all I am looking for.

Comm. Mitchell: You can't give anybody else's opinion [fol. 691] but your own.

The Witness: But the opinion is based, Mr. Commissioner, on other factors.

Comm. Mitchell: Can you answer the question? If you can't say no.

The Witness: I would say yes, it was superior.

Comm. Mitchell: All right.

By Mr. McDonald:

Q. As I understand it, at the present time does your Department make inspections of eggs at origin?

A. Yes, sir.

By Comm. Mitchell:

Q. Upon request, or do you have a service doing that without request?

A. No; upon request.

Q. Only upon request?

A. Yes.

Q. Now who bears the expense of that inspection?

A. It is borne by the applicant for the service.

Q. How much does that run?

A. It's variable, depending upon the size of the lot or the type of service that is rendered. We have two types of service. One is a fee grading service, and the other is a contract service, where an individual is maintained right in the plant where the eggs are being packed.

Q. Do you have any of that service now, the contract service?

A. Yes, we do.

[fol. 692] Q. Where do you have that?

A. All over the country to a greater or lesser degree.

Q. That is at the request of the shipper, the applicant?

A. Yes.

Q. So the shipper is the one who would have to make that application?

A. Correct.

Comm. Mitchell: All right.

Mr. Zearfaus: Can I ask a couple of questions?

Comm. Mitchell: Yes.

By Mr. Zearfaus:

Q. You say you have 2,000, approximately 2,000 men licensed to make inspections. Does that include the state inspectors?

A. Yes, sir.

Q. They are not all on the——

A. The state inspectors are on the state payrolls.

Q. They are on the state payrolls?

A. That is right.

Q. Then how many of these 2,000 people are on the United States government payrolls?

A. Oh, I would say approximately three-fourths of them.

Q. Three-fourths of them. Would you know in every instance where a state inspector has an inspection? Is that reported to the Department of Agriculture?

A. Yes, sir. Yes, sir.

[fol. 693] Mr. Zearfaus: That is all I have.

Mr. Canny: I would like to ask one more question if I could.

Comm. Mitchell: You have already had your cross examination. Go ahead this time, but we are not going to do that again.

By Mr. Canny:

Q. When you get a request to inspect eggs by a shipper, by industry, and it is performed by your own inspector, are those eggs stamped in any way or are the cases stamped?

A. They are identified with a stamp.

Q. Then as a result of that identification does the shipper get more money or less money for his product?

A. That would depend as to whether or not the eggs were being shipped to an individual that requested the inspection. Conceivably he might, but that would not necessarily follow.

Q. Well, generally speaking, if you know?

A. How is that?

Q. Generally speaking, if you know, would he get more money for his eggs? Isn't that preferable from the shipper's standpoint, to be able to show that he has a USDA stamp on his eggs?

A. Yes, I would say he would.

Q. As the result of that he is entitled to a profit. He does ask for and gets more money for his eggs, doesn't he?

A. It is not likely that he would get any more over the [fol. 694] general price level at that time.

Q. Well he certainly would not get any less for that USDA on there, would he?

A. He should not.

Mr. Canny: That is all.

Redirect examination.

By Mr. Matson:

Q. When you eliminate the leakers from cases which you examine, is that something which happens very often, or is it very seldom?

A. You mean, now, at origin, Mr. Matson?

Q. Yes, or wherever you grade the eggs.

A. Well, it happens every time we make an inspection. We find leakers.

Q. How many leakers would you find in a carload of eggs, that you eliminate?

A. Everything else being equal, I would say a very small number, if any.

Q. Well, maybe three or four leakers in a whole carload?

A. I would not say that many.

Mr. Matson: That is all.

Mr. Rynder: May I ask a question?

Comm. Mitchell: Yes.

Recross-examination.

By Mr. Rynder:

Q. Mr. Hammon, did I correctly understand you to say that ten per cent of the carload shipments are now inspected [fol. 695] under your authority?

A. I said about ten per cent of the total eggs produced in the country were being inspected by us at the present time.

Mr. Zearfaus: Does that include the state inspectors?

Comm. Mitchell: I am sorry. This gentleman is cross-examining. We are going to have some order here. No one has a right to break in when you are cross-examining. If you have an objection, make it.

Mr. Rynder: I am just trying to get myself straight on this.

By Mr. Rynder:

Q. You say ten per cent of the eggs produced. Do you mean by that ten per cent of the eggs that are in one way or another shipped and put into commercial channels?

A. No. I mean produced.

Q. Produced; regardless of whether they are shipped?

A. Yes, sir.

Q. In other words, people request this Federal inspection even though they are not going to ship the eggs to some other point?

A. Yes, sir.

Q. Now of the destination eggs, those reaching the big

markets, could you give any estimate as to what percentage has this Federal inspection?

A. No, I don't think I could. I don't have any figures available that I could give, even as an estimate, on that.

[fol. 696] Q. Well, as I have heard the record concerning this inspection in New York, the joint inspection at the New York piers, that is in no sense what would be done under your Federal inspection?

A. No, sir.

Q. The Federal inspection involves candling of the eggs?

A. Yes.

Q. And as I have read the testimony that is not done at the joint inspection at the New York piers; is that right?

A. That is right.

Mr. Rynder: Thank you.

Commr. Mitchell: Thank you, Mr. Hammon.

(Witness excused.)

Comm. Mitchell: I think we should proceed with the Pacific Coast. We came out here not to hear the government witnesses. We came out here for the purpose of hearing the Pacific Coast, and I don't want to take any more time on hearing government witnesses. If we did we would not get through with the Pacific Coast witnesses.

Mr. Matson: Just as you say, your Honor. The next witness is merely going to introduce an exhibit and sit down.

Comm. Mitchell: Mr. Matson, you told me this man would take ten minutes. He has taken 50. But let us have this one witness who will introduce the exhibit and sit down.

Mr. Matson: That is a promise.

[fol. 697] Comm. Mitchell: You have been sworn before, Mr. Schilt?

Mr. Schilt: Yes.

LEON SCHILT resumed his testimony as follows:

Direct examination.

By Mr. Matson:

Q. Are you the same Mr. Schilt who testified at the New York hearing in this proceeding?

A. I am, Mr. Matson.

Q. Do you have a supplementary exhibit to present at this time?

A. I do.

Mr. Matson: May that be identified as Exhibit 42?

Comm. Mitchell: 42 is the next number. The next exhibit should be 42.

(Government's Exhibit No. 42, Witness Schilt, was marked for identification.)

By Mr. Matson:

Q. What is the purpose of this exhibit?

A. Exhibit No. 42 contains supplementary statistics, bringing down to date statistics contained in Exhibit No. 35 submitted to the Interstate Commerce Commission at Brooklyn, New York, on December 15, 1949.

Q. In this proceeding?

A. That is correct, sir.

Mr. Matson: That is all on direct examination, your Honor.

Comm. Mitchell: Well now, about the cross-examination [fol. 698] of this witness. This is quite a lengthy exhibit here. I suppose Mr. Schilt will be available at Chicago?

Mr. Matson: Yes, sir.

Comm. Mitchell: But so far as the railroads are concerned, will it be satisfactory to cross-examine at Chicago?

Mr. McDonald: Preferably.

Mr. Rynder: I would like to ask just about one question, but it is not cross-examination.

Comm. Mitchell: Certainly.

Mr. Rynder: Mr. Schilt, I have not had time to read this exhibit, and I won't be at the Chicago hearing. Does it

show any noticeable trend in any particular direction from your original exhibit?

The Witness: The statistics shown in Exhibit 42 just bear out further the trends as shown in the statistics contained in Exhibit No. 35.

Mr. Rynder: Thank you.

Comm. Mitchell: Is there further cross-examination?

(No response.)

Comm. Mitchell: With the understanding that Mr. Schilt will be available at Chicago and that cross-examination at that time on this exhibit may be made, we will excuse you now, Mr. Schilt.

(Witness excused.)

Comm. Mitchell: Well now, is that all of your witnesses, [fol. 699] Mr. Matson?

Mr. Matson: That is all I have, your Honor.

Comm. Mitchell: How do you want to proceed with the witnesses for the Pacific Coast, Mr. Rynder?

Mr. Rynder: May we go off the record?

Comm. Mitchell: Yes.

(Discussion off the record.)

Raoul Dedeaux was sworn and testified as follows:

Comm. Mitchell: Give your name, address and your business to the reporter, please.

The Witness: It is Raoul Dedeaux, R-a-o-u-l D-e-d-e-a-u-x.

Comm. Mitchell: How do you pronounce that?

The Witness: Day-dough. 2304 East Olympic Boulevard, L. A. 21, California.

Comm. Mitchell: What is that?

The Witness: French, sir.

Direct examination.

By Mr. Rynder:

Q. Mr. Dedeaux, what is your business?

A. I am a contract carrier by motor truck in the state of California.

Q. And what do you transport, principally?

A. General freight.

Q. Do you also transport eggs?

A. I do, sir.

[fol. 700] Q. From and to what points?

A. Principally from the Bay area to the Los Angeles area, the San Francisco territory.

Q. Do you have any origin point that is your principal point?

A. Modesto, California.

Q. And the haul to Los Angeles is about how much?

A. Approximately 300 miles.

Q. Could you give a close estimate of how many cases of eggs you haul per year in that service?

A. Well, per year, counting all of our customers, perhaps I imagine somewhere between 50 and 60,000 cases of eggs.

Q. Do you know of your own knowledge the amount of damage that has happened in the course of your transportation of those 50 or 60,000 cases?

A. Well, I did take one customer to check on cases damaged, and found that in 10,000 cases we damaged one case by actual breakage that we had to pay a claim on.

Mr. Rynder: I believe that is all, Mr. Dedeaux.

Cross-examination.

By Mr. Canny:

Q. Is your service of an intrastate nature?

A. Yes.

Q. No interstate at all?

A. No.

Q. Do you have an interstate permit from the ICC?

A. No, sir. No, it is strictly intrastate.

[fol. 701] Mr. Canny: I move that his testimony be sticken, on the ground that it is not pertinent to the issues here. Your Commission has no jurisdiction over that.

Comm. Mitchell: Motion denied.

Mr. Rynder: Thank you, Mr. Commissioner, but I suggest that this same rule has been published and is under

suspension by the state authorities of California; and we anticipate that this record will be used in that case. In fact, we thought that it would be possible that there would be a joint hearing here.

Comm. Mitchell: That is all. Thank you, Mr. Dedeaux.

(Witness excused.)

Comm. Mitchell: Call your next witness.

Mr. Runder: Mr. Barger.

W. F. Barger was sworn and testified as follows:

Comm. Mitchell: Will you give your name, address and occupation to the reporter?

The Witness: My name is W. F. Barger; my home address is 604 North Frederick Street, Burbank. I am employed by Olson Bros., Inc., as traffic manager. Their general office is located at 3849 Lankershim Boulevard, Hollywood.

Comm. Mitchell: What do Olson Bros. do?

The Witness: They are engaged in the wholesale egg business.

[fol. 702] Direct examination.

By Mr. Rynder:

Q. Mr. Barger, have you received eggs at your Los Angeles plant both by rail and by motor vehicle?

A. Yes, we have.

Q. Does Olson Bros. handle a substantial quantity of eggs per year as a receiver and distributor?

A. I believe they are the largest wholesale egg distributors this side of the Mississippi. There are a few co-ops.

Q. Can you give your experience with reference to damage in connection with the shipments received by your company, by rail and by motor vehicle?

A. Surely. Prior to the year——

Q. Just proceed in your own way.

A. All right. Prior to the year 1947 a large percentage of our eggs moved by rail, but during 1947 two factors

came to our attention which caused us to change our method of shipping eggs. First, there was a serious claim situation and, second, the increasing freight rates. We found in some cases that the difference in the cost to ship per case by rail over truck, and taking into consideration that in truck shipments the refrigeration is included in that freight bill, would be more than double the profit we had anticipated making on a case of eggs. In candling, packing and cartoning eggs, we find that one-half cent a dozen is a reasonable profit.

Comm. Mitchell: May I break in there? You referred [fol. 703] to the serious claim situation.

The Witness: That's correct.

Comm. Mitchell: Where was that serious claim situation?

The Witness: In my files.

Comm. Mitchell: I mean what locality, what city?

The Witness: The claims that were in our plant when we buy these eggs.

Comm. Mitchell: Where do these eggs come from?

The Witness: They come from North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin and Illinois.

Comm. Mitchell: Well that has no connection with anything going to New York?

The Witness: No.

Comm. Mitchell: You have no shipments in or out of New York?

The Witness: In or out of New York.

Comm. Mitchell: All right.

The Witness: We can't afford to have these claims because, regardless of how careful we are in trying to get our money back from the railroad, in my opinion we never get back all that it costs us. We have to use every means at our command to eliminate these claims. To the best of my knowledge all of our rail claims had unmistakable evidence of rough handling by the carriers.

[fol. 704] Mr. Canny: Mr. Examiner, I object to that and ask that it be stricken; also, the witness is reading from a prepared statement, and I ask that we be furnished with a copy of that prepared statement, or have him close it up.

The Witness: Don't give them a copy. We will close it up.

Comm. Mitchell: Now, Mr. Witness, you are here appearing, and you are to state your own knowledge.

The Witness: That is correct.

Comm. Mitchell: Do you have copies?

The Witness: I don't have copies.

Comm. Mitchell: Nobody said you could not ever use that copy. You can use that copy if you want to. I am going to overrule his objection, but you are to state your own evidence and not mere opinions and conclusions. That is what you must stick to. Your general statements, of course, are not admissible, and I would not claim they are.

By Mr. Rynder:

Q. Where the railroad cars, Mr. Barger, showed damage, did you examine a number of them personally?

A. I personally examined at least 90 per cent.

Q. What did you find upon those examinations?

A. I found evidence of rough handling. Usually the first ten rows would have cases where they were crushed; eggs were leaking from them, etc.

Q. Do you have in mind any specific instance of that kind?

[fol. 705]. A. I can remember two claims. One, a claim came into Los Angeles, and somebody from—would you like for me to give his name? I have it here.

Comm. Mitchell: If you want to give it, yes.

The Witness: Mr. McAnany requested that we truck the eggs from the Union Pacific yard to our North Hollywood plant to prevent further damage. As a matter of fact, they paid $45.32 for the trucking charge, because the car came in such a battered condition that they did not want to have any further damage.

I can remember another one, where the S.P. local hit a car while it was on the team track at North Hollywood for unloading.

I can remember, further, we were having some fairly heavy claims that I talked to, that I talked to, I believe it was, Fitzgerald, who I believe was traffic manager for

Southern Pacific at that time, about the rough handling at the team track at North Hollywood by the switching crews.

Comm. Mitchell: Have you any figures on the amount of claims? How many cars a year does your company handle?

Mr. Rynder: Mr. Commissioner, he has assembled some figures. I think he would have to refer to the memorandum for it.

Comm. Mitchell: He has a perfect right to refer to the memorandum. Nobody said that he did not have.

[fol. 706] The Witness: From May 1, 1946, until December 31, 1947, we received a total of 231 cars by rail. Out of this 231——

Comm. Mitchell: Let me have those years again now?

The Witness: May 1, 1946, until December 31, 1947, we received a total of 231 cars. On the 231 cars we filed 23 claims against the railroads, totalling $3,794.90, averaging $164.99 per claim, or $16.43 for every movement by rail. Out of the 231 cars, 208 arrived at our plant without damage.

Mr. Canny: How many was that, please?

The Witness: 208. If the rails can ship 90 per cent of our commodity without damage I fail to see why we should be penalized with a tolerance of any kind for claims.

Comm. Mitchell: Now this is interesting. You are here complaining bitterly about the rough handling by the rails?

The Witness: Yes, I am.

Comm. Mitchell: And yet you only have a loss of $16 a car.

The Witness: I can ship the same thing by truck.

Comm. Mitchell: I am not asking you that question. If you can ship the commodity by truck why don't you ship by truck?

The Witness: We are shipping by truck.

Comm. Mitchell: That is fine. You should use that means of transportation which is the cheapest and the best; but you claim your loss on the rails is only $16 and some cents.

The Witness: I agree with you, but in my opinion it is too [fol. 707] high.

Comm. Mitchell: I would like to see it lowered, too. Swift

& Company has an average claim, and this record shows it, of less than that, but go ahead.

Mr. Rynder: As I understood the position of the witness, what he is objecting to is this: simply having what we consider a very low railroad loss, that if another car does come along and is injured through railroad damage he would be subjected to a four or five or six per cent reduction of his claim.

Comm. Mitchell: That is right. That is the reason we are here.

Mr. Rynder: Yes, I understand that.

By Mr. Rynder:

Q. Under what circumstances do you file a claim, Mr. Barger?

A. If there is——

Q. I mean on a railroad car.

A. If there is any evidence of rough handling that we can see, where cases are broken or any egg yolk is running out, or anything which would lead us to believe that we should file a claim we segregate from the shipment. However, many cases, we feel, are damaged, and then if the balance shows any concealed damage naturally we would call for another inspection, but I can't ever remember a case where there has——

Q. Then in case you see something that you believe indi- [fol. 708] cates railroad damage, do you call for a joint inspection with a railroad inspector?

A. That's correct.

Q. And is the result of the joint inspection reported to the railroad and made the basis for the claim?

A. That is correct. In previous testimony the railroads have said that when eggs are moved by truck from the point of origin to the railhead, they inferred that there was some damage in those eggs, and they felt that they should have a tolerance. I made a check on shipping eggs from our Modesto plant to North Hollywood, and found the percentage of loss to be less than 3/1000ths of one per cent.

Comm. Mitchell: Were you through, Mr. Rynder?

Mr. Rynder: You may proceed, Mr. Commissioner.

Comm. Mitchell: Are you through with the direct examination?

Mr. Rynder: I think so.

By Comm. Mitchell:

Q. Do you ship eggs from the Middle West by rail in here now?

A. No, sir.

Q. Are you shipping any eggs by rail?

A. We have not shipped a car by rail since the date I gave you. I think it was December 31, 1947.

Q. So you did not quit shipping by rail on account of this tolerance rule?

[fol. 709] A. No. I quit for the two reasons which I gave in our testimony.

Q. And you believe that truck transportation is better transportation for eggs than rail?

A. It gets them here faster; it gets them here for less money, and it gets them here with less damage.

Q. So you are satisfied with truck transportation?

A. At the present time.

Mr. Rynder: If I may add one question, Mr. Commissioner?

By Mr. Rynder:

Q. Do you know that the four and six per cent rules would place a greater tolerance allowance on eggs brought by motor vehicle from one point to the railhead?

A. That's correct. That is why——

Q. And yet your experience has been such that it would justify such discretion?

Mr. Canny: I object to that. He has not had any since 1947.

Mr. Rynder: He has had experience with trucks and has right now, and he said that they arrived without any damage.

Mr. Canny: Not at the railhead he hasn't.

Mr. Rynder: Los Angeles is a railhead.

Comm. Mitchell: Let us not argue. I will let him answer if he has had any experience and is able to answer.

The Witness: I might say that we have moved hundreds of carloads of eggs by truck, up to, say 300 miles, and that [fol. 710] our claim experience would be way under a dollar per car.

Comm. Mitchell: A dollar per truck, you mean?

The Witness: A full 600-case lot.

Comm. Mitchell: All right. Is there cross-examination?

Cross-examination.

By Mr. Canny:

Q. What kind of an inspection did you make at point of origin, where those eggs were hauled 300 miles to the railhead?

A. At the point of origin?

Q. Yes, the rail point of origin.

A. We are taking them from a country plant, from a producer to an assembly plant, and if at the assembly plant the case is in good condition it is put onto a highway truck and comes this 300 miles into our plant, and we do it without damage. Each case is candled and packed.

Q. At the point of origin?

A. At the point of destination.

Q. Is there any inspection made after it moved the 300 miles from the farm to your plant?

A. It might move only 30 miles from the farm to the plant. No inspection is made there. Then we would again reship it——

Mr. Rynder: When you say no inspection is made there, do you mean at the farm or at the plant?

The Witness: When we pick them up at the farm no inspection is made. We ship them into our plant. If there is [fol. 711] no evidence by the case, the appearance of the outside of the case, that we have caused any damage to it, we would then give it to the truck line to ship to our North Hollywood plant, which would be about 300 miles, and at destination, that is at North Hollywood, all of the cases are candled and packed.

Comm. Mitchell: I don't see what interest you have in this case, Mr. Witness.

The Witness: I have no——

Comm. Mitchell: Your company, Olson Bros. Inc. You don't want to go back and ship by rail, do you?

The Witness: We may ship by rail next month, I don't know.

Comm. Mitchell: Well the truck shipments, you testified, are better from every angle.

The Witness: Today it is.

Comm. Mitchell: The rates are lower.

The Witness: That is correct.

Comm. Mitchell: The claims are lower.

The Witness: That is correct.

Comm. Mitchell: Better service.

The Witness: That is correct.

Comm. Mitchell: So under the existing conditions, at this hour you have no interest in shipping by rail at all?

The Witness: As of today, no. Maybe tomorrow we will be shipping from a locality where we will be forced to ship [fol. 712] by rail.

Comm. Mitchell: What locality is that?

The Witness: Oh, at the present time we are shipping a large quantity of eggs out of Hillsboro, Kansas.

Comm. Mitchell: You are trucking them?

The Witness: Yes, but it took me about four months to set up some satisfactory trucking facilities. There must be places in the United States where I couldn't have set them up. I almost gave up on that one.

Comm. Mitchell: Well, that is your only interest, that you might?

The Witness: We might.

Comm. Mitchell: All right. Is there any further cross-examination?

By Mr. Canny:

Q. When you are talking about satisfactory trucking facilities at this point in Kansas, what do you mean?

A. I mean somebody that has equipment, that we would consider satisfactory to make a 2,000-mile trip, with the proper refrigeration.

Q. Would the rates be involved?

A. I don't care about the rates. They are set by the Interstate Commerce Commission, normally.

Q. Are these contract haulers?

A. Some are contract; some are under the Interstate [fol. 713] Commerce Commission.

Q. What troubles did you have setting up these facilities in Kansas that you talked about?

A. Finding somebody that had the proper equipment and the proper refrigeration.

Q. That was the character of your trouble?

A. You see, they also have to be financially sound, so that we feel that our business relations can exist.

Q. Well, they have to be financially sound when they get a certificate, don't they?

A. I would not say.

Q. You don't have to have a certificate to haul eggs, do you?

A. No.

Mr. Canny: That is all I have.

By Mr. McDonald:

Q. Mr. Barger, in regard to these 23 claims that you filed, which I think you said totaled $3,794.90——

A. Yes?

Q. Were those claims paid by the railroads?

A. Each and every one of them was paid.

Q. To the extent claimed by you?

A. On one of them I believe there was some controversy, and we settled for 50 per cent, due to the fact—I have the correspondence here if you would like to see it. It seems to me that they said that the cases were of green material and that the only one pulled out of——

[fol. 714] Comm. Mitchell: We don't have any interest in the compromise settlement.

By Mr. McDonald:

Q. How about these two cars that you specifically remember; one car that you mentioned with particularity that you asked to have trucked to North Hollywood to save further rail damage?

A. That is correct.

Q. What was the extent of the damage on that particular car, if you recall?

A. There were 332 dozen and one egg that we checked.

Q. Excuse me. I don't care. You give it any way you want, but to shorten it I wonder if you could tell me the amount of the claim?

A. $605.87.

Q. You spoke of another car, if I heard you correctly. You said an S. P. local hit another car while it was unloading?

A. That's correct.

Q. That would be in the nature of pure accident, I presume, unless you want to elaborate on it.

A. It was sitting on the spur and it was hit by the S. P. local. If they would have been going three or four miles an hour they would have called it "humping", but if you are going ten or 15 miles an hour I guess you would have to call it a collision.

Q. Was this a switching operation?

[fol. 715] A. Yes, a switching operation.

Q. Do you remember the amount of the claim on that particular car?

A. $661.50.

Q. Now, do you remember any other instances of that general character, unusual instances, for example, involved in this total of $3,794?

A. Out of these 23 cars, 11 of them were damaged in a period of four months. They are all coming in basically with the same number of cars per week or per month.

On about August 13th I had a chat on the telephone with the traffic manager at Southern Pacific about the damage that was being caused in the switching yards at North Hollywood. My claim file indicates that from that date on the claims decreased a great deal.

Q. Mr. Barger, my only interest is this. I notice that out of approximately $3,800 these two particular shipments that you happened to mention totaled $1,200. If you take those two out it would considerably decrease the average per car, wouldn't it?

A. It would decrease the car, it is true. Every one that

we take out would decrease it per car. That is what I am interested in, in not having any.

Q. Have you made any shipments beyond a railhead, which I take it from the testimony you have given, in this in-
[fol. 716] stance would be Los Angeles, or North Hollywood?

A. You mean beyond Los Angeles?

Q. Yes.

A. We have taken them from all the points I have stated previously in my testimony into North Hollywood, Ventura and Modesto.

Q. My question is have any of those been shipped by rail beyond, upon arrival at Modesto or North Hollywood?

A. No, no. When they come into the plant they are used in the plant.

Q. All your testimony runs to purely truck operations, from wherever you make your pickup to North Hollywood, or in there?

A. No. We had 231 cars that we have shipped by rail.

Comm. Mitchell: He is testifying that prior to December, 1947, between May of 1946 and December, 1947, he shipped 231 cars by rail.

By Mr. McDonald:

Q. And that would be to North Hollywood, Mr. Barger?

A. I just stated.

Comm. Mitchell: I don't see where this is material. This man has had no experience whatsoever during the period that this tolerance rule was in effect, and he has not shipped by rail.

Mr. Slusser: May I interrupt, Mr. Commissioner?
[fol. 717] In California we have a peculiar situation, sir, where the Western classification is the ruling classification for both rail and motor truck. Thusly, if a tolerance rule is placed in by the rail carriers, this tolerance rule would apply in the State of California to truck shipments as well.

Comm. Mitchell: I didn't know that.

Mr. Rynder: I might also state that we were advised, Mr. Commissioner, that in interstate commerce a great

many motor carriers are parties to the suspended classification.

Comm. Mitchell: You mean trucking concerns?

Mr. Rynder: Yes, sir.

Comm. Mitchell: I didn't know about your situation in California; so you may go ahead, Mr. Witness. It is material. I didn't know about it. Thank you.

Further cross-examination?

Mr. Canny: That is all I have.

Mr. McDonald: Thank you.

By Mr. Root:

Q. Are you now shipping wholly by truck?

A. Yes.

Q. You don't ship by rail at all?

A. At the present time we are not. Might I add one other thing?

Comm. Mitchell: I am sorry I made that statement. I did not realize the situation in California, so your evidence is material.

[fol. 718] Mr. Rynder: Let me interject, Mr. Commissioner, and say that to a limited extent that is true, sir.

Comm. Mitchell: I would say maybe that is true, but in California that is true.

The Witness: I would just like to get one point into the record.

Comm. Mitchell: You may make your statement.

The Witness: The Department of Agriculture just had a witness here to testify as to the Federal inspection.

Comm. Mitchell: We just listened to him. We realize that. The record shows that he was.

The Witness: I would just like to point out that the cost to us if we would enter into something like that would be more than our average claim, and I believe it costs us $12 a car every time we ask for an inspection; and as far as the eggs being of more value, we use that service when we don't know what the eggs are. If we are buying from someone who is a very reputable dealer naturally we don't ask for a certificate, because we know what they are going to be.

Mr. Zearfaus: Mr. Commissioner, with respect to the

peculiar California situation, I would like to ask the witness this question:

By Mr. Zearfaus:

Q. What percentage of your business moves by contract carrier, and what percentage moves by common carrier?. I am speaking, of course, of egg traffic by truck.

[fol. 719] A. It would probably be about 50-50.

Q. Is it your contention that in either case those truckers are subject to the consolidated traffic rules?

A. Yes.

Q. Both of them?

A. Why of course they are.

Q. The contract carriers are parties to it?

A. Why sure.

Q. To the consolidated classification?

A. Why, of course.

Comm. Mitchell: Is that all?

Mr. McDonald: That is all.

Comm. Mitchell: Thank you, sir.

(Witness excused.)

Comm. Mitchell: Call your next witness.

Henry D. Greene was sworn and testified as follows:

Comm. Mitchell: Will you give your name, address and business occupation to the reporter.

The Witness: My name is Henry D. Greene, Executive Secretary, Pacific Dairy and Poultry Association, 1304 East 7th Street, Los Angeles. The Pacific States Butter, Egg, Cheese and Poultry Association. I should correct that to give you our legal name. I am executive secretary, legally, of the Pacific States Butter, Egg, Cheese and Poultry Asso-

[fol. 720] ciation, of that address, doing business as the Pacific Dairy and Poultry Association. The change of name has been duly authorized, and is now in legal process of transfer.

Our membership consists of more than 300 members, primarily in the Pacific States of California, Arizona, Ore-

gon, Washington, Nevada, Idaho, Montana and Utah. In those states reside our active members, and all our active members are distributors, candlers or dealers in butter, eggs, cheese, poultry and turkeys. In addition to our active members, we have associate members in allied industries, or operators in these dairy and poultry commodities, in other parts of the country. Among our active members we have 87 firms handling eggs, in California; three in Idaho; 16 in Oregon; five in Utah; nine in Washington, and a total of three in the states of Arizona, Montana and Nevada.

Our Board of Directors passed a resolution in May, 1950:

"RESOLVED: That the Pacific States Butter, Eggs, Cheese and Poultry Association vigorously oppose allowance of tolerances in the payment of damage claims on shell egg shipments, as represented in the Interstate Commerce Commission's Docket No. 30030, or other proposals, to allow damage tolerances."

Direct examination.

By Mr. Rynder:

Q. Mr. Greene, is California a surplus or deficit state in the production of eggs?

[fol. 721] A. California in general is a deficit area in production with respect to the eggs consumed. I have an exhibit here, if you would care to have it, from the states which ship eggs into the markets of Los Angeles and San Francisco.

Q. Have you sufficient copies?

A. Yes, I have those.

The Witness: Mr. Commissioner, I apologize for not keeping the headings on there.

Comm. Mitchell: If you state into the record what they are, we will have it marked as an exhibit, and I will identify that.

The Witness: I will be glad to, with the proper identification if desired.

Comm. Mitchell: I don't think that is necessary. It will be Exhibit No. 43.

(Respondents' Exhibit No. 43, Witness Greene, was marked for identification.)

Comm. Mitchell: Will you explain, Mr. Greene, what 43 is? Identify it.

The Witness: This shows the receipts of shell eggs during 1949, in our two principal markets, San Francisco and Los Angeles, from origination in California and other principal states of origin of these eggs. It shows that a total of 2,371,187 cases were received in San Francisco and Los Angeles, including intrastate shipments, showing a substantial [fol. 722] volume of egg business. In addition, the market of Portland, Oregon, which is also in our territory, received 285,939 cases during the year 1949. Those are the only markets on which Market News Service figures are readily available, but the total in the three markets of 2,657,126 cases shows a substantial volume of eggs handled in this area.

I would also like to offer another exhibit, which shows that there has been a substantial increase in the amount of shipments received at the markets of Los Angeles and San Francisco by truck in the last several years.

Mr. Rynder: May that be marked 44?

Comm. Mitchell: It will be marked Exhibit 44.

(Respondent's Exhibit No. 44, Witness Greene, was marked for identification.)

The Witness: Exhibit 44 shows that in the market of Los Angeles in 1945, 39 per cent of the total egg receipts arrived by truck. For the year 1949, 90 per cent arrived by truck. The first six months of 1949, for comparison, showed 84 per cent arrival by truck, and the corresponding first six months of 1950 show that 96 per cent of the Los Angeles receipts arrived by truck.

In the case of San Francisco, in the same Exhibit No. 44, in 1945 58 per cent of the egg receipts arrived by truck, and the entire year 1949 showed 86 per cent receipts by truck. The first half of 1949, for comparison, showed 78 per cent [fol. 723] arrival by truck, and the first half of 1950 shows 96 per cent receipt by truck.

Comm. Mitchell: How many cases do you load on a truck, generally?

The Witness: I would say, generally speaking, approximately a carload; somewhere around 600 cases. That is in the case of over-the-road trucks. In local market shipments truckloads would obviously average considerably lower.

Comm. Mitchell: That means about 8,000 truckloads of eggs came into Los Angeles during the first six months of this year? Is that about right?

The Witness: I haven't checked that figure.

Comm. Mitchell: You have 484,000 and some cases by truck, and you say that there are 600 cases to a truck, 8,000 trucks.

By Mr. Rynder:

Q. Mr. Greene, have you been advised by your members of the principal reasons for this change from rail to truck transportation of eggs?

A. Our members generally state that they are using motor carriers in preference to rail because, first, trucks give faster delivery; second, trucks handle the eggs with less damage; third, truck carriers make prompt settlement of damage claims. Miscellaneous reasons also are given, that, first, eggs do not have to be trucked to a rail siding for loading, and trucks do not have to be unloaded on rail sid-
[fol. 724] ings at destination; also, truck personnel assist in loading and unloading.

Q. Do certain of your members have rail side tracks at their plants and warehouses?

A. A portion of our members have rail sidings at their plants and warehouses, and another considerable number do not have.

By Comm. Mitchell:

Q. The main reason why your members are using trucks is on account of the service that the truck gives; is that correct?

A. I would say yes.

Q. And is it a fact that part of the service, or a great deal of the service that the trucks give the railroads cannot give, due to the regulations imposed upon the railroads?

A. (No response.)

Q. Well, for example, you say the trucker helps you load and unload. The railroad can't do that, can they?

A. I believe that's correct.

Q. The trucker picks it up and takes it to the warehouse that you want to have it delivered to?

A. Yes.

Q. The railroad is limited to the interchange track. One delivery, isn't it?

A. Yes.

Q. So the railroads cannot give that service under the [fol. 725] present regulations; isn't that a fact?

A. Practically; I would say yes.

Comm. Mitchell: We would indict them if they did, the Interstate Commerce Commission would, and that is one of the great problems of transportation today, in my judgment the biggest one, and I think the sooner the American people and the shipping public understand that the better it is going to be. Regulations have not kept pace with transportation. The trucker can render that service, which is of great value to you; the rails cannot. As a result, just as you say, you are turning to trucks for the special service, and I am not blaming you.

The Witness: Yes, I understand.

Comm. Mitchell: I am blaming it on the fact that regulations have not kept pace with transportation.

Mr. Matson: May I comment very briefly upon that subject?

In regard to pickup and delivery service, the railroads have performed a lot of that service, particularly with respect to less than carload shipments, and I feel that there is no legal obstacle to their extending that service to carload shipments if they so desire.

Comm. Mitchell: Unloading?

Mr. Matson: Yes, sir.

Comm. Mitchell: They can't do it at the present time.

Mr. Matson: All they have to do is volunteer.

[fol. 726] Comm. Mitchell: There is no use of you and I arguing. I stated my opinion. I should not have stated it. I think your Department will get a lot better service for

the people when you get to it. But that is my personal opinion.

Go ahead.

By Mr. Rynder:

Q. Mr. Greene, would the so-called tolerance rules, either 4, 5 or 6, materially affect your members in connection with rail shipments, or are motor truck shipments subject to the same tariff?

A. Yes. There are grave potential injuries in such a tolerance. Let us take an extreme example, where a car of eggs in the hands of the railroads becomes a total loss. If a tolerance of 4 or 5, as at the present time, or the proposed six per cent now being asked were applied, they would apply to the whole car, and the shipper or the owner of the eggs would not receive payment for the amount of $360 at 4 per cent, $450 at 5 per cent, or $540, if the 6 per cent applied.

Q. You are basing that upon an assumed value per dozen of eggs?

A. 50 cents a dozen, just for example. Now in the case of a lesser damage, for example let us suppose that 50 cases received damage, each case containing a total of 30 dozen, or 360 eggs. Let us suppose the damage in the 50 cases totaled 15 dozen scattered through the lot, representing 6 per cent damaged. I should say the 50 cases contained 1500 dozen and 6 per cent is damaged, or 90 dozen damaged. [fol. 727] 90 dozen eggs, worth 50 cents, represents a loss to the owner of $45 per car, or $45 period. Because of the 6 per cent tolerance rule, which we will show applies, no damage claim is allowed.

Now, Mr. Commissioner, I would like to interpret these two statements in terms of what such potential loss means to the operators of our egg industry.

As Mr. Barger stated, and as the egg operators generally will tell you, they are indeed fortunate if they realize a net profit on the handling operation of these eggs, in which they invest perhaps $9,000 for a rail shipment or other shipment carload, of 15 cents a case, or half a cent per dozen. In the case of the small lot just referred to, where the loss was $45 on tolerance exemption applied to 50 cases that were received damaged, the $45 loss repre-

sents half of the owner's expected profit on merchandising that car of eggs. In the case of the total loss of a car, where we said the exemptions at 4, 5 and 6 per cent applied, in the first case the $360 a car possible loss represents a $90 profit on four cars of eggs. In the case of $450 on total loss of a car, it represents the operator's profit on five cars of eggs, and the 6 per cent, or $540, would represent the operator's expected outside top net profit on six cars of eggs; so we feel that the potential injuries to the owner of the eggs is substantial. We also feel that it acts in a discriminatory manner, because it is a manner of chance as to whether the car of eggs arrives at destination in good [fol. 728] order or whether it may receive damage in transit.

Q. Does the shell egg industry operate on a very narrow margin of profit as between what the farmer-producer receives and the customer pays?

A. The distributors of shell eggs operate on one of the narrowest margins, and under the most competitive conditions existing in the major farm commodities. The records show that out of the consumer's dollar spent for eggs, approximately 73 cents was paid back to the farmer who produced them, as of July, 1949, according to the Bureau of Agricultural Economics, USDA. The remaining 27 cents out of the consumer's dollar has to cover the margin of the retailer, the containers, the transportation, and all other factors and costs of distribution, including the wholesaler or distributor.

I would like to say that this narrow margin of distribution cost has no doubt been one of the factors which has encouraged the increased consumption of shell eggs, which has risen on a per capita basis from 278 eggs per person in 1935 to 386 eggs per capita in 1948. The per capita consumption of eggs declined in 1949 to an estimated 374 eggs per person. There is at present an over-supply of eggs, which has caused the accumulation of more than 82 million pounds of dried eggs accumulated in the hands of the government under the support program as of July 1 1950. The valuation cost to taxpayers of these eggs is [fol. 729] in excess of the number of pounds quoted. This is an increase over the 54,619,000 pounds held by the gov

ernment as of July 1, 1949. May I repeat that figure, the first figure, to you, over 82 million pounds.

Comm. Mitchell: How long can a powdered egg be kept?

The Witness: I can't answer that question. Some of our witnesses could. There is considerable question about their edibility, even when they are fairly new, by some people. It is therefore vital, we feel, to maintain the lowest possible spread between the producer and the consumer of eggs.

Proposals such as are under discussion in this Docket, would tend to increase the cost to the distributor of eggs through failure to collect the full amount of claims. He therefore would have to either pass this additional cost of doing business back to the producer, or on to the consumer. Otherwise it might eventually force him out of business.

Therefore we feel that any tolerances in the settlement of egg claims should be denied.

By Mr. Rynder:

Q. Does the experience of your members show that it is possible to transport a great many carloads without any damage at all?

A. We have members who have received a great many cars without any damage and others who have received a great many cars with little damage, as will be shown in individual testimony. We understand that the record of heavy claims on shell eggs is shown principally in the [fol. 730] New York area and several other East Coast cities, and we are advised that carriers have given no evidence of studies as to the condition of handling of cars which might have caused such damage. We see no evidence as to excessive damage or claims in connection with shipments in Pacific Coast territory. On the other hand, Pacific Coast billings into Eastern territory are negligible. The records show that 78,129 cases, or approximately 130 cars of eggs, were received in New York City in 1948, from the eight Pacific states we represent. Most of those were from the state of Utah. The production of eggs in the eight Pacific states during this same year amounted to 13,500,000 cases, or approximately 22,500 carloads.

We therefore maintain that there is no evidence to

justify any tolerance being applied to shipments in the Pacific states area.

Q. That is for the reason that a tremendous stack of claims are prepaid first in New York and then a few other Eastern cities; is that right?

A. Yes, sir.

Q. So far as you know?

A. Yes.

Comm. Mitchell: Would you have objection to placing a tolerance against the shipments as to New York? Would your association? Let us put it that way.

[fol. 731] The Witness: Our association, so far as I know, would not be able to give an opinion on that without a vote. We have members in New York, associate members.

Comm. Mitchell: Well, let us put it this way: Do you know of any good reason why, so far as your members are concerned, there should not be a tolerance placed against the New York shipments?

The Witness: So far as our Board of Directors have expressed themselves, and other members have expressed themselves to me—and by the way this whole matter has been extensively publicized to all our members, repeatedly—they don't feel that tolerances of any kind are justified.

Comm. Mitchell: Even where there are excessive claims, such as there are in New York?

The Witness: As far as my information goes, and with respect to the record, Mr. Commissioner, we fail to see where any showing has been made that the application of tolerances will solve the problem in New York City, as far as eliminating loss is concerned.

Comm. Mitchell: But you do admit that there are excessive claims in New York City?

The Witness: There is no question about that, sir.

Mr. Rynder: There is excessive damage.

The Witness: May I state that we have no way of knowing the justification, I mean the authenticity of the claims. [fol. 732] The record shows that they are authentic, I believe.

Comm. Mitchell: Well, as far as these damage claims, your association would not advocate the railroads' handling of any commodity into any locality where they are paying

back more than 50 per cent of the total revenue, would you?

The Witness: No, sir. If you want my personal opinion, we would recommend finding the source of the damage and endeavoring to reduce the damage.

Comm. Mitchell: That is what I have been doing for pretty nearly two years. I have not succeeded very well, either. Go ahead.

By Mr. Rynder:

Q. Would the 4, 5 or 6 per cent rule limit the carrier's liability upon shipments that were offered in perfect condition?

A. To the extent that it would relieve the carrier of paying up to those percentages of the damage sustained it would limit the liability of the carrier, in our opinion, and that appears to be contrary to Section 20 11 of the Interstate Commerce Code.

Q. Would the rules also operate in a discriminatory manner as between the shipper who suffered some transportation damage and the shipper who did not?

A. As previously pointed out, in the figures I gave we showed that the application of tolerances, either on a total loss of a car or in a smaller claim on damage of 50 cases, would operate according to the chance of whether the car [fol. 733] got through in good condition or not, and to that extent the shipper who had the misfortune to receive a car showing damage in transit would be discriminated against and be placed at a disadvantage in competition with the shipper whose car arrived in good *addition*.

That is all I have, sir.

Mr. Rynder: I believe that is all we have, except that I should like to offer Exhibits 43 and 44.

Comm. Mitchell: Any objection to the offer?

Mr. Zearfaus: No objection.

Mr. McDonald: No objection.

Comm. Mitchell: They will be admitted.

(Respondents' Exhibits Nos. 43 and 44, Witness Greene, were received in evidence.)

Comm. Mitchell: You may cross-examine.

Cross-examination.

By Mr. Canny:

Q. Mr. Greene, looking at Exhibit 44, do those numbers refer to cases of eggs?

A. Yes. That is an error. I should do this over. Those are all cases. If the Commissioner wishes, I will be glad to reprint this, with proper headings, and that omission, and submit as many copies as needed.

Comm. Mitchell: Do any of the parties want that done? I will have to have the consent of the parties.

Mr. Matson: "Receipts of Los Angeles, as indicated"; [fol. 734] "Receipts of San Francisco, as indicated", would be sufficient?

The Witness: That is right.

By Mr. Canny:

Q. Now, Mr. Greene, in Exhibit 44, can you tell us, of those shipments received by truck, how many were received or hauled by common carrier trucks or contract carrier trucks?

A. I have no way of even making a guess.

Q. Now as a rule do your trucks have a full truckload of eggs when they haul them out of this area?

A. I would say that the majority do. There are also a good many mixed truck shipments, with poultry and other commodities, but I would say a majority are straight trucks of eggs.

Q. Well, do you know?

A. I have no figures on that.

Q. If they are full truckloads of eggs, then they are exempt, aren't they?

Mr. Rynder: No.

Mr. Canny: I am not asking you; I am asking him.

Mr. Rynder: It is a question of law, I think.

Comm. Mitchell: Let him answer if he can.

The Witness: The common opinion is that shell eggs are fresh farm commodities, and not under the ICC Act.

Mr. Rynder: I would like that to be subject to a reading of the Act. If they are regulated in one movement and they

carry exempt commodities, then they become subject to your [fol. 735] regulation in total, as I understand your interpretation?

The Witness: All I am giving is opinion here.

Comm. Mitchell: I would say that it is pretty dangerous to express an opinion as to what the cause is. We have a report, I might say, that might come out some time, but I don't know when, on that question; but go ahead.

By Mr. Canny:

Q. If they are exempt, then they would not be subject to any classification rule, would they?

A. I can't answer that question.

Q. Then you know, as a matter of fact, that truckers have to adopt the rail classification rules?

A. I am not informed on that legal point at this time.

Mr. Canny: That is all.

By Mr. McDonald:

Q. Mr. Greene, do you have any figures to indicate the extent of rail shipments by members of your association to Eastern destinations, particularly New York, during the period covered by your Exhibits 43 and 44?

A. The only figure I have is from the record, I believe it was Mr. Schilt's testimony, of 78,000.

Q. You did not prepare an exhibit like that yourself, did you?

A. No, I did not, but it is in your record of the case, total shipments, receipts into New York from the eight Pacific Coast states, and unquestionably a proportion of those would include some of our members' eggs.

[fol. 736] Q. You did state, I believe, that whatever movement there is it is from your standpoint relatively negligible?

A. Yes, sir.

Q. Now with regard to this Schilt figure that you have referred to, do you recall whether or not that indicated rail shipments versus truck, or is it just an overall total figure that does not distinguish?

A. All I know is that that is supposed to be the total number of cases of eggs.

Q. So you would not know whether they were rail shipments or truck?

A. No.

Q. Now in your opinion would there be any objection to a tolerance rule of the character that you have been referring to, if that rule were restricted to shipments destined to New York City?

A. Inasmuch as our opinion is that the application of tolerances is a wrong principle, discriminatory and detrimental to the egg industry, I don't see how we could recommend its application anywhere.

Q. Mr. Greene, I meant to ask you, or I thought I did, for your personal opinion as such. I noticed you said "our". I presume there you are talking about the overall opinion of your association?

A. I am talking about the group.

[fol. 737] Q. I was trying to pin you down to your own personal opinion.

A. My opinion, personal opinion, would be even stronger in not recommending application of tolerances.

Q. Now will you make one or two assumptions. If we assume, for the purpose of this question, that the record clearly indicates that generally speaking there is a certain amount of breakage, to the extent that a rule reflects that overall average, would you still say that you objected to it?

A. I don't quite understand that question.

Q. Well, assume for the moment that the record clearly indicates justification for some sort of a tolerance rule.

Mr. Rynder: Oh, I object to that question.

Comm. Mitchell: The objection will be sustained. I don't see where it is material. This man very definitely stated the views of his association and the people he appears for in regard to this. The objection will be sustained.

By Mr. McDonald:

Q. Would your personal objections be just as strong if the rule were limited solely to New York City?

A. Yes.

Q. You mentioned a movement of 130 cars from Utah.

I think it was 130 cars. Do you know whether or not that particular movement was actually a rail movement, or a truck movement?

A. I have no information on that. I might suggest that testimony will be given from one of our Utah shipper members later.

[fol. 738] Q. But so far as you know you can't say that the 130 car movement that you referred to actually moved by rail?

A. No, sir.

Mr. Root: We will have a witness on that.

By Mr. McDonald:

Q. Do you know when that movement took place?

Comm. Mitchell: They are going to have a witness who will cover that specifically. I can see no reason to go into that with this man.

The Witness: According to our information——

Comm. Mitchell: Let us have it with the other witness, who knows it.

Mr. McDonald: That is all.

Mr. Zearfaus: I have two questions.

By Mr. Zearfaus:

Q. Referring, Mr. Greene, to your Exhibit 44, you show there the number of cases which moved by truck and by rail. Can you tell us what percentage of the eggs were placed in packages at the rail point of origin?

A. I have no information on that.

Q. Either way. That is, either rail point of origin or not rail point of origin?

A. No.

Mr. Zearfaus: That is all I have, sir. Thank you.

Comm. Mitchell: That is all, Mr. Greene. Thank you very kindly.

(Witness excused.)

[fol. 739] Comm. Mitchell: Call your next witness.

Mr. Matson: While we are waiting, I offer Exhibit 42 in

evidence, subject to cross-examination of Mr. Schilt at the Chicago hearing.

Comm. Mitchell: Is there any objection to 42? It was not offered.

Mr. Canny: No objection.

Mr. Zearfaus: There is no objection.

Comm. Mitchell: It is now being offered, subject to the right to cross-examine at the Chicago hearing. It will be received.

(Government's Exhibit No. 42, previously marked for identification, received in evidence.)

Comm. Mitchell: We will take a short recess.

(Short recess.)

Comm. Mitchell: The hearing will come to order, please. Call your next witness.

LESTER O. CASPERSON was sworn and testified as follows:

Comm. Mitchell: Please state your name, residence and business.

The Witness: Lester O. Casperson; I am a partner, and manager of O. Casperson & Sons, at 340 Ninth Street, San Francisco.

[fol. 740] Direct examination.

By Mr. Rynder:

Q. In what business is Casperson & Sons engaged?

A. In the egg and butter, food business generally.

Q. And you handle a substantial quantity of eggs?

A. We do. It is the major portion of our business.

Q. Do you handle these eggs from the origin point of the eggs to your California plant? I mean by that do you buy them, inspect them, and so forth at origin?

A. Well, there are two types of purchases that we have. We buy quite a bit of locally produced eggs, and by local I mean in Sonoma County, and they are gathered there, from the ranches, at our plant in Petaluma, and

there transported from Petaluma to our plant in San Francisco.

The second type of procurement we have is where we buy eggs in the Middle West and they are transported to our San Francisco place, either in rail cars or truck shipments.

Q. Well now, with respect to eggs from the Middle West, would you be personally informed as to the type of inspection given those eggs before they are offered to the carrier for rail or truck transportation?

A. On many of our purchases, not all, we require a USDA inspection certificate, which confirms the grade of eggs that we are buying.

Q. Well, with respect to the eggs that you ship from your [fol. 741] station at Petaluma to San Francisco, what inspection do you give them?

A. Well, we make no inspection of the eggs there other than the ones that we candle and grade at Petaluma.

Q. Do you candle and grade all the eggs that you are going to put on the market?

A. We do.

Q. Please tell me, in as much detail as you can, just what that candling and grading inspection consists of, and to what extent it eliminates improper rates, and so forth?

A. When we buy eggs from the producers—I will explain that situation to you first—they are just as they come, in many instances, from the nests. They are ungraded and not graded for size or inferior quality. Some of the producers grade the eggs for size and cleanliness. In other words, if the eggs are dirty they will clean them up. When they come into our plant either in San Francisco, or Petaluma—and at the present time we are doing most of our candling and grading at San Francisco—they are candled and graded. By candling I presume, for the purpose of the record, it might be compared to putting the egg in front of an x-ray in a darkened room, so that we can see the inferior quality of the egg and pick out any blemishes or defects of quality on the interior quality, as well as the condition of the shell.

Q. And does that candling and grading remove damaged [fol. 742] eggs before they are offered for shipment?

A. It does, yes, either damaged for shell quality or inferior quality.

Q. Do you ship any damaged eggs unless they are marked and shipped as such?

A. No, no.

Q. Does the grading and candling exclude all checks, cracks and broken eggs?

A. It does, up to the extent that the candling operation is not 100 per cent perfect. If it were a good many of our troubles in the egg business would be over. But there are certain tolerances provided for in the standards. We try to get to as close to 100 per cent as we possibly can, and the tolerances are provided to take care of the errors of human judgment that will arise in any operation of grading.

Q. Do you receive both rail and truck shipments?

A. We have.

Q. Please state your experience. How many cars, and so forth, the amount of damage, and facts of that kind.

A. I went through our records and in 1948—now, these are just interstate shipments; they don't include our local shipments, which we haul in our own trucks in most instances—we had shipments, seven rail cars, totaling 3,376 cases. In those seven rail cars we had three damage claims involving 72 cases, and the total sum amounted to $307.01. [fol. 743] Do you want the details?

Q. Not of each claim, no.

A. Of each claim.

Q. What was the total number of cases in those cars?

A. 3,376 cases.

Q. And how many damaged?

A. 72 cases.

Q. That gives about the percentage?

A. Well, to give you an instance, one car had 15 cases damaged; another car had 42 cases damaged, and a third car had 15 cases damaged.

Q. And the other cars were received by you in a satisfactory condition?

A. In good order, yes. That same year we had truck shipments, eleven truckloads, or 7001 cases. There were three damage and shortage claims on them, involving seven cases, totaling $96.02. One of the claims covered

one case damaged, of a total loss. I think that is when the driver was taking it out of the truck he dropped it. One instance had four cases of eggs short; and the third instance had two cases that were damaged.

Q. Do you have a later experience than that?

A. In the year 1949 we received shipments in 20 rail cars, totaling 10,452 cases, and in those 20 cars there was one damage claim involving one car, in which the damage [fol. 744] was 197 cases of eggs, and the claim was $200.47.

Q. Was that paid?

A. That was not paid, due to our own handling of the car as it came in. We did not call the inspectors, as I remember. As I remember the records, I think it must have been concealed damage, and we did not follow the proper procedure; so we presented the claim and it was disallowed.

Q. But that would have been the total damage, if the claim had been paid?

A. Yes, yes. The 19 cars arrived in satisfactory condition. In addition to the rail shipments we had 34 truckloads, totaling 20,093 cases, and the truckloads had no damage involved in that particular year.

As far as 1950 is concerned, our movement by rail has been very light, and while I did not look too closely at the records, my memory I think tells me, or memory tells me that we had no damage claims on them.

Q. Mr. Greene mentioned an average profit by the dealers, egg handlers, wholesale handlers I mean, of 15 cents per case. Would that conform to your experience in your own business?

A. It will fluctuate from year to year, depending upon conditions, volume, and so forth. I would say that is a pretty close approximation of it. That of course is net profit.

Q. That is what I meant.

A. Yes.

[fol. 745] Q. After your expenses.

A. Yes.

Q. Did you have anything else?

A. Well, I would like to comment, for the benefit of the record, that in 1945, 1946 and 1947—I haven't got specific figures on it—our freight claims by rail were quite heavy.

During those years most of our shipments were by rail, but we have noticed a decrease in the number of claims, and the extent of damage in 1948 and 1949, compared to the earlier years, and it is my opinion that a lot of that has been brought about by the fact that the railroads themselves have had more efficiency in their own operations in the handling of the cars. I am just of the opinion that if that trend can continue I think we will get down to the pre-war situation where the claims were more or less of a small nature. Now whether that is possible or not will remain to be seen. I do think this, that the imposition of this four and six per cent rule would be a penalty on the industry; and I think it would be an incentive for the railroads to do all they possibly could to cut those claims. That is my own personal observations over a period of years, and I would like to offer that for the benefit of the record.

Mr. Rynder: I believe that is all, Mr. Commissioner.

Comm. Mitchell: Cross-examine.

[fol. 746] Cross-examination.

By Mr. Canny:

Q. Do your records go back beyond 1949, as to the number of rail shipments received by you?

A. You mean beyond 1948?

Q. 1948.

A. Yes. I didn't dig them out. You know, after a certain number of years the records get kind of dusty.

Q. If I understand your testimony, your shipments by rail are getting less and less every year; is that it?

A. They have had a tendency that way. I will explain it, partly. I think it can be explained partly along this line: that since the early prewar days the business that we have had for eggs, many of them have been on a delivered basis, and a lot of the industry—there is a convenience in there by trucks that some of the shippers want. They are naturally quoting us on a delivered basis San Francisco. They do their own routing, or have the choice of what form of transportation they want to use.

Q. In other words, you are using trucks more than rails

today, even though you admit the rail service is getting more efficient?

A. We, frankly, from our own position—there is good to be said on both sides of it. The rails can offer conveniences many times that the trucks cannot.

Comm. Mitchell: If I am correct in understanding your [fol. 747] testimony, you shipped more cars by rail in 1949 than you did in 1948?

The Witness: We did. What we are looking for is a dependable service all the way through. We hold no brief for either service. We ourselves don't. I will say this, our claim damage here is in favor of the trucks, but then there are other compensating influences on it.

By Mr. Canny:

Q. Are any of your carriers floated into San Francisco, do you know?

A. You mean by barge across the Bay?

Q. Yes.

A. I think most of them are. We are on a Western Pacific siding, and they use a barge from the east side of the Bay; and I think Santa Fe does. We have had them over the three lines that are serving San Francisco, the Santa Fe, the Western Pacific and the Southern Pacific.

Mr. Canny: That is all.

By Mr. McDonald:

Q. Mr. Casperson, you spoke of certain tolerances that were provided. I presume you were referring to tolerances as observed by the trade, in whether or not a given car or shipment of eggs was or was not acceptable; is that so?

A. Yes. There are tolerances that are provided in the standards for the grades and sizes of eggs.

Q. You of course do take advantage of that tolerance, then?

[fol. 748] A. No, we don't. It is impossible. I would like to correct that impression that seems to prevail, that if a tolerance is set up in there a good many people have the impression that the industry can take advantage of the

tolerance, and that's impossible. The tolerance is there for a definite purpose, to provide for error in human judgment. If, for instance, the tolerance provides—and I would have to refresh my memory on it—but say they did provide a tolerance of 2 per cent in checks. We can't tell our candlers and graders, "Now pack these eggs and be sure to include the 2 per cent of checks or leakers", or whatever.

Q. That is not what I meant, Mr. Casperson. If in fact there was a check indicated, that there was in fact 2 per cent of checks or leakers, and your tolerance indicated that that was acceptable from a commercial standpoint, you would take advantage of the tolerance in that respect, wouldn't you?

A. In presenting a claim?

Q. No, no, no, from the standpoint of trade, buying and selling the eggs.

A. Definitely. We got to. In our own grading and packing practices it will reflect it all the time.

Q. Did you indicate whether or not any of your shipments went to the New York market?

A. No, none of ours do. All of ours were from the Middle West, interstate to San Francisco.

[fol. 749] Q. From your standpoint, if the proposed tolerance rules were limited to apply to New York shipments, shipments destined to New York, you would not have any objection to that, would you?

A. Yes, because I don't think—now, please understand that I am no traffic man. I don't know too much about the legal basis of the law, but I don't think it would be possible to limit it just to New York, because if it applies to New York it is going to come eventually, the tendency is going to spread to the rest of the country.

Q. How long have you been in the egg business?

A. Well, I spent my——

Q. Approximately, in years.

A. 35 years.

Q. Don't you know that there was a rule like that in effect in New York for roughly 20 years or more, that distinguished New York versus the rest of the country?

A. No, I didn't.

Q. You didn't know that?
A. No.

Mr. McDonald: That is all I have.
Mr. Zearfaus: I merely have one question, Mr. Casperson.

By Mr. Zearfaus:

Q. You mentioned seven cars in '48 and 20 cars in '49. I gather they were not solid carloads of eggs?
A. They were.
[fol. 750] Q. They were solid carloads?
A. They were either 600 cases, or 480. They reduced the minimum requirements, you remember. During the war they raised it to 600. They were straight carloads.

Mr. Zearfaus: I see. That is all I have. Thank you, sir.
Comm. Mitchell: Thank you, Mr. Casperson.
Mr. Rynder: May I ask you a question?
Comm. Mitchell: Certainly.

Redirect examination.

By Mr. Rynder:

Q. Mr. Casperson, certain questions were asked you about commercial tolerances. Now you have received cars, according to your own testimony, some of which you felt had damage caused by the railroads, and some didn't. Was the commercial tolerance applicable to each and every one of those cars?
A. Oh, yes.
Q. So you don't use that as a basis for making a railroad claim?
A. No, we don't.

Mr. Rynder: Thank you.
Comm. Mitchell: Thank you, Mr. Casperson.

(Witness excused.)

Comm. Mitchell: Call your next witness.
Mr. Rynder: Mr. Slusser.

[fol. 751] E. K. SLUSSER was sworn and testified as follows:

Comm. Mitchell: Will you give your name, your address and your occupation to the reporter.

The Witness: My name is E. K. Slusser, S-l-u-s-s-e-r, traffic manager, Poultry Producers of Central California, 840 Battery Street, San Francisco. We are a farm co-operative and marketing association, representing 11,000 members located throughout northern California.

Direct examination.

By Mr. Rynder:

Q. Mr. Slusser, isn't it a fact that your co-op handles a very substantial amount of the total egg production of California?

A. We do. Our production figures for 1948 were 1,492,530 cases; 1949, 1,620,630; and 1950, for the first six months, 940,536 cases.

Q. Well, I was asking you about what proportion. That is, of the total production.

A. I don't know the proportion, but I believe it would be well in excess of 50 per cent.

Q. Of the total production?

A. Yes.

Q. Now have you had experience in shipping these eggs, both by rail and by motor vehicle?

A. I have.

[fol. 752] Q. Please state that experience, particularly with respect to the damage suffered between shipment and receipt?

A. We have both shipped and received by rail and truck. Our experience is that we have far less damage when the eggs are shipped or received by truck than we do by rail.

Q. Now, either by you or under your direction, or under the direction of your co-operative, were all the eggs shipped given a certain inspection before being offered either to the rail or to the motor carrier for transportation?

A. Yes.

Q. What is the nature of that inspection?

A. Our eggs are received at ten different packing plants,

and at each of those plants they are inspected. Each egg is inspected and graded according to the U.S. Department of Agriculture, consumer grades for shell eggs. These consumer grades—I merely read from the USDA standards for quality for individual shell eggs, as promulgated by the U.S.D.A., and for the grades through AA, A, B and C qualities, which are consumer packed. We grade on all eggs, those as well as any others, strictly according to the USDA standards.

Q. Now does that mean——

Comm. Mitchell: Pardon me. We have that in the record now, haven't we?

Mr. Matson: I believe that is Exhibit 21.

Comm. Mitchell: I just wanted to make sure. Thank you.

[fol. 753] By Mr. Rynder:

Q. Does that mean that you put into your various shipments the number of checked, cracked or broken eggs that are allowed by USDA standards?

A. Under no circumstances would we put cracked or checked eggs in our consumer shipments. If we were to have cracked and checked eggs, they are separated and sold as such, and so indicated on bills of lading or shipping documents.

Q. And they are not offered for transportation to a consumer; is that right?

A. They are offered for transportation as checked or as cracked eggs.

Q. But they are not offered as the standard grade eggs?

A. Under no circumstances, no.

Q. So you don't take the tolerances allowed by the Department of Agriculture in inspecting and packing your eggs for shipment to consumers; is that right?

A. I would like to, if I may, point out what seems to be some difference there on this matter of tolerance. That tolerance, as I understand it, is strictly to take care of, oh, shall we say human error in grading the eggs as to quality. It is not a tolerance which would be applicable to damage. The cracked eggs, and these five grades here, in each of the five it indicates clearly that the egg must be unbroken. It must be clean. It must be unbroken. It must be practi-

cally normal, or slightly abnormal. That is as to the shape of the egg; but in no instance for the consumer [fol. 754] grades can the egg be broken, with the exceptions which I mentioned, which would be classified as such on the bill of lading and on the bill of sale.

Q. Now have you any experience that you can state in figures, as to damage by rail or truck, and so forth?

A. Our experience for the last three years; the last two years, let us see: during 1948 we had occasion to make five shipments to the Eastern seaboard by rail. Three of those, as I recall, were to New York City, and three were to Baltimore.

Mr. McDonald: That makes six; you said five.

The Witness: Oh, I beg your pardon. Two to Baltimore. In each instance on the five shipments our claims ran in excess of $700.

By Mr. Rynder:

Q. On each car shipped?

A. No, for the total. Unfortunately, I did not bring a breakdown of the exact damage as applied to the individual cars, but each of the five cars had damage upon arrival at destination.

Comm. Mitchell: Do you have the damage at Baltimore and New York separate?

The Witness: Both places?

Comm. Mitchell: Do you have it separate?

The Witness: No, I don't have it separated, sir.

By Mr. Rynder:

Q. What has been your experience in the western terri- [fol. 755] tory?

A. In the western territory our experience has been that during 1949 we had total claims against all egg shipments of $1,515.56, of which $405.21 was rail, and the remainder, $1,110.35 on truck shipments.

Q. Now that does not mean much unless you can give some estimate of the number of cases or cars that were involved.

A. Well, during that period of time, 1949, we handled 1,620,630 cases of eggs.

Q. And the damage you have mentioned, that was indicated in connection with that?

A. The total damage incurred in that connection is $1,515.56. I have not worked out the percentage, but it would be very very small.

Q. A small fraction of one per cent?

A. To date this year we have handled 940,536 cases, with a total damage claim of $561.31.

Q. Have you anything further, Mr. Slusser?

A. I have not.

Comm. Mitchell: Cross-examination?

Cross-examination.

By Mr. Canny:

Q. I think you said, in answer to your attorney, that under no circumstances did you permit cracked or checked eggs in your consumer shipments, at the point of origin when you made your inspection; is that right?

[fol. 756] A. That is our instructions.

Q. What you mean is that you never knowingly put one in?

A. Well, our instructions are, or we endeavor whenever possible, that is, we endeavor entirely, to have as nearly perfect as humanly possible eggs placed in our shipments.

Q. The reason for your tolerance, even in the trade, is that you are liable to have human error, isn't it?

A. That tolerance, as I indicated before, is for human error in connection with grading. In this grading, as is pointed out by Mr. Casperson, the grading is done in front of a small candling lamp, as you gentlemen probably know; and I discussed this fully with our inspectors and with our people who are in charge of this, and they tell me that the tolerance is strictly for an allowance as to grade. We don't knowingly ship a cracked or checked egg in our consumer grade egg.

Q. Then you would not actually know yourself?

A. I have had occasion. I visit our packing plants constantly. I observe the grading.

Q. But you don't do all the inspecting yourself?

A. Obviously, with 1,600,000 cases, no.

Q. See if I can understand your figures in comparison with Exhibit No. 44. If I remember your figures correctly, you had received more eggs at San Francisco than is shown in Exhibit 44.

A. May I suggest that most of our eggs are produced in California, and are brought to our packing plants where [fol. 757] they are candled, inspected and packed, and then shipped out throughout the state of California and the 11 western states, Hawaii, to the Orient, to the Army Forces, and elsewhere.

Q. Would they show up in this Exhibit 44?

A. I believe that Exhibit 44 covers shipments brought into Los Angeles in interstate commerce.

Mr. Canny: That is all I have.

Comm. Mitchell: California is not listed in that exhibit. In 43 it is listed. California is not listed in there, is it? Oh, yes, received in Los Angeles; that is right.

The Witness: I might indicate, as I observe this—you can probably check with Mr. Greene—this probably covers, as is quite obvious, Arkansas and elsewhere; covers interstate shipments with the exception of California coming into Los Angeles, of which there were 17,693 cases originating in California.

Mr. Zearfaus: That is Colorado, sir.

The Witness: This line is apparently off. Received at San Francisco and received at Los Angeles. I believe of the PMA, of the Market News Service, this only covers interstate shipments.

Mr. Canny: That is all I have.

By Mr. McDonald:

Q. Mr. Slusser, does your association use the inspection service of the Department of Agriculture?

A. We do when required; yes, sir. Our inspection service [fol. 758] is under the supervision of both the USDA and the state of California, and we use the USDA inspection on shipments where it is required.

Q. Would you have any idea of approximately to what extent you use that with regard to your total business? In other words, how many of your interstate shipments would you say are made under USDA inspection?

A. Well, all shipments to the armed forces, all shipments going offshore, that is by water carrier, and in a number of cases where our buyer requests it.

Q. Would you have any idea of approximately what the percentage was?

A. No, I haven't.

Q. In this 1949 business that you spoke of, did you state what part of that, if any, moved to the New York area by rail?

A. In 1949 we had no shipments to the New York area by rail.

Q. Have you had any shipments to New York or the New York area by rail in 1950?

A. We have not.

Q. So that if the proposed tolerance rule should be limited in its application by the Commission to shipments destined to New York, you would not be directly affected on the basis of the last year and a half's experience, would you?

A. Not on the basis of the last year and a half's experience, but I would not say that we would not be affected. Our [fol. 759] past history is such that we have marketed eggs in New York in great volume, and it is only now, because of the excessive freight rates that got us out of the New York market. We will market in New York and on the Eastern seaboard whenever that opportunity presents itself.

Q. Have you made any shipments to the New York area by truck in the last year and a half?

A. We haven't.

Q. Would that be because the truck rates to New York are substantially comparable with the rail rates?

A. That would be one reason. Another is that in the last year and a half our economic conditions have been such that we have marketed mostly in the West Coast area, in the 11 western states, plus the fact that our eastbound rail rates are considerably higher than the westbound rail rates on the same commodity, on eggs.

By Mr. Zearfaus:

Q. Mr. Slusser, I know you don't have the figures, but could you make that information available showing the damage claims that you had in connection with the three

cars that went to New York City in 1948, and the two cars that went to Baltimore in that same year?

A. I will be glad to make that available to you gentlemen at your offices.

Mr. Zearfaus: Mr. Commissioner, would it be permissible to have him furnish that information?

[fol. 760] Comm. Mitchell: If he desires we will accept it and give you 15 days, Mr. Slusser. I think it would be very desirable information to have, if we could have it.

The Witness: All right.

Mr. Zearfaus: I have no questions, Mr. Commissioner.

Comm. Mitchell: Thank you.

By Comm. Mitchell:

Q. Mr. Slusser, does this farm cooperative, of which you are the traffic manager, just handle eggs?

A. No, sir. May I correct that? It only produces and handles eggs and poultry. It has some poultry. We handle some poultry, but that is incidental. We manufacture feed, for our members only, and we carry on a supply business, supplies incidental to the production of eggs as such. We are primarily an egg marketing organization, an egg producing and marketing organization. We are peculiarly specialized accordingly.

Q. I am a member of several cooperatives, but you have 11,000 members, and you say that they are primarily interested in the production of eggs?

A. Yes, sir, entirely.

Q. Does California produce sufficient eggs for the people of this state?

A. No. We are now a deficit area, sir. In past history, going back some 20 years ago—of course that was before my time with the co-op—we shipped practically, oh, 90 per cent [fol. 761] of our production eastbound. They shipped practically trainloads of eggs out of the Petaluma-Sonoma area. At that time the chicken population of California probably exceeded the human population. Since then everybody has discovered California, and the situation has reversed.

Q. The chickens have left the state?

A. I know that the chickens have not kept up with the people. Perhaps they kill them off too fast.

Comm. Mitchell: I believe that is all, Mr. Slusser.

Mr. McDonald: Off the record.

(Discussion off the record.)

By Mr. McDonald:

Q. Mr. Slusser, could you tell us whether or not your organization uses truck common carriers or contract common carriers?

A. Our association uses both common carriers, rail and truck, contract and truck carriers.

Q. Could you give us approximately the percentage, contract versus common, by truck?

A. I would say at the present time it's roughly about an 80-20 percentage, 80 per cent common carrier and 20 per cent contract carrier. We have a peculiar situation here in the State of California, wherein the Public Utilities Commission of the State of California, for reasons best known to perhaps themselves and itself, is scrutinizing each of the contract carrier's permits; and under the present setup [fol. 762] practically all of these, well a great many of these contract carriers, are applying for certificates as common carriers, so that within the, I would say, immediate future in California—and the Commissioner can check this—a very large percentage of our trucking industry will be on a common carrier basis.

Q. Would the situation be different, so far as the truck business is concerned, interstate versus intrastate, within the state of California?

A. That would apply the same. The same proportion would apply to our interstate business, of which we have a very large volume, particularly in the Pacific Northwest and elsewhere.

Mr. McDonald: That is all. Thank you very much.

Mr. Matson: I have one question, if I may.

By Mr. Matson:

Q. Mr. Slusser, are these so-called contract carriers which are serving you now also serving other shippers of eggs within the same territory?

A. They do.

Mr. Matson: That is all. Thank you.

Comm. Mitchell: That is all Mr. Slusser. Thank you.

(Witness excused.)

Mr. Rynder: If I may go off the record for a moment?

Comm. Mitchell: Yes.

(Discussion off the record.)

[fol. 763] R. L. McDonough was sworn and testified as follows:

Comm. Mitchell: State your name, address and occupation to the reporter.

The Witness: My name is R. L. McDonough, traffic manager, Utah Poultry & Farmers Co-operative, Salt Lake City, Utah.

Direct examination.

By Mr. Root:

Q. Now you have prepared a statement here, but before you start in on that, I notice that you don't say how long the Utah Poultry & Farmers Co-operative has been in existence.

A. Well they have been in existence since 1923, for over 27 years. I have been with them for 19 of those years.

Q. And is it a purely egg cooperative?

A. No. We market eggs and poultry, manufacture, and distribute poultry feed and animal feed, and act as a purchasing agency of farm supplies for our member producers.

Comm. Mitchell: I think you have covered that somewhat in your statement, so you may go ahead, if you will, please, and read the statement. Go ahead, Mr. McDonough.

The Witness: I have been engaged in that capacity for the past 19 years, and previously, for over 12 years, was employed by a large railroad as supervisor of its Overcharge Claim Bureau, engaged in the adjustment of freight claims for overcharges in rate, weight and classification; [fol. 764] and later in the preparation and handling of loss and damage freight claims before the Arbitration and Appeal Committee of the American Railway Association, involving suits between railroads.

The organization which I am authorized to represent in this proceeding is a cooperative composed of about 6,000 members, who depend upon us for the wholesale marketing of their eggs and dressed poultry, as well as the manufacturing of poultry feeds which they need, and for farm supplies and equipment. We conduct a large feed manufacturing operation at Salt Lake City, Utah, and from this point supply 27 plants with feed and supplies, for convenient distribution to our membership. For the year 1949 we did a gross business of between 21 and 22 million dollars.

For years, and especially before World War II, the principal volume of our egg production reached the Eastern seaboard, where it commanded premium prices. Obviously it would have been difficult, if not futile, to ship eggs such great distances on any basis other than quality. For the greater portion of 20 years our eggs have been moving by rail from Utah to the Atlantic seaboard, with varying degrees of freedom from serious damage. During the early 1930s we had a fleet of leased refrigerator cars under our control and part of the time under our own marks. Those cars were devoted exclusively to the transportation of our eggs. They were uniform in size, and were kept in excellent condition both as to interiors and exteriors. [fol. 765] They were equipped with coil elliptic springs and snubbers, which more or less controlled vertical oscillation, and contributed greatly to the safe transportation of our eggs to Eastern markets. This, too, was at the time all switching and road hauls were performed with steam power. Later the ICC condemned the practice of shippers receiving mileage earnings for the use of equipment leased by them, and we finally discontinued the use of private cars.

Then came World War II, and pooling of refrigerator

cars. Today we are required to load what refrigerator cars may be available. Although we know that the railroad car companies serving our area attempt to select cars of proper dimensions for egg loading, and do a good job for us in this locality, it is impossible for them to make selection on the basis of spring and draft gear equipment of the car which may be available for a particular load. We therefore feel that this is a potential source of damage to eggs, and one which the carriers might well explore. With trains being operated at much higher speeds than in the thirties, the factor of vertical oscillation is something that must be seriously considered. We would very much rather have our eggs handled with less speed if damage could be averted. Claims are costly to us because, although we may collect 100 per cent on a claim, there are certain elements which cannot be recovered, including the possibility of the loss of a customer [fol. 766] because of appearance only of a load of eggs.

Not long ago I talked these matters over with a representative of the railroads in the East, to ascertain if there was not some way to improve protection of eggs from in transit damage. We had, some time before that, discontinued the use of wooden gate braces with sliding wedges, which we had used for years upon recommendation of railroad engineers, for straw-buffing in the doorways of the cars. At that discussion it was decided that some tests would be advisable on cars to the East, by using excelsior blankets at each bunker end of the car, extending the full height of the load. Some excelsior blankets were therefore especially made for this type of protection and were used in eight carloads of eggs.

The value of that kind of protection is indicated by the reports of damage at destination, which are shown at page 2, line 5; page 3, lines 1 and 4; page 4, line 4, and page 5, lines 4, 5 and 6 of our exhibit, U.P.& F.C. No. 2.

By Mr. Root:

Q. Has that No. 2 been introduced in this proceeding?
A. No.

Mr. Root: I would like to have that exhibit identified as Exhibit No. 45.

Comm. Mitchell: Which one is that?

The Witness: That is our U.P.& F.C.

Comm. Mitchell: It will be marked Exhibit No. 45.

[fol. 767] (Respondents' Exhibit No. 45, Witness McDonough, was marked for identification.)

By Mr. Root:

Q. Proceed.

A: Although the blankets were used at one loading point only, so that the application and use of the blankets would be uniform, a more general use appears desirable and valuable. Hence, at the present time plans are under way for the further use of excelsior blankets. We feel confident that additional tests will further demonstrate the need for their wider usage as an important step in the prevention of damage.

I believe that this is the first attempt of any egg shipper to approach the problem in any such way, but we are very serious about it and are determined to do every reasonable thing in our power to minimize, if not entirely overcome, in transit egg damage. It is amazing to us that we can ship carload after carload of eggs from Utah to the Pacific Coast without damage, and that 99 per cent of truckloads of eggs are never the source of claims for damage. Our eggs are assembled, graded and packed under identical circumstances, whether they go to the Eastern seaboard or to the West Coast. However, many of our carloads reach destination without damage, as shown by statement No. 3, which I should like to introduce as Exhibit No. 46. It shows that for the year 1949 we originated 33 carloads of eggs at various points in Utah and Idaho which reached destinations in the East without damage.

[fol. 768] By Mr. Root:

Q. No. 3 is the single sheet?

A. Yes.

Mr. Root: That will be No. 46?

Comm. Mitchell: That will be No. 46.

(Respondents' Exhibit No. 46, Witness McDonough, was marked for identification.)

By Mr. Root:

Q. And that is shown on Exhibit 46?

A. That is shown on Exhibit 46. At the time we entered into the experiment with excelsior blankets, we wrote the vice-presidents in charge of traffic of several railroads—there were over 17 of them—both east and west of Chicago, soliciting their interest in the matter of proper handling of eggs, and directed their attention to our need to select a route or routes for the movement of our eggs according to the desirability of that class of traffic to the particular railroads, and according to their recognition for the need of specialized attention, both in switching and in placing cars in proper location in trains. Proper coordination between carriers in a particular movement is of much importance, because what is accomplished by a particular railroad in switching and handling cars with air and properly entraining them is completely destroyed, with economic loss to everyone, if its connecting lines do not exercise the same degree of care. It is perfectly conceivable that there are some railroads which are not egg-carrying railroads, and I think [fol. 769] that it is unfair to them and to the shipping public to saddle them with business which they cannot handle without considerable damage. Their own claim experience, as related to revenue for handling eggs, is the proper yardstick to use in measuring damage expectancy, and where it is not good those railroads should be bypassed.

In publishing the five per cent egg damage tolerance rule effective July 24, 1948, the carriers were uncertain what they needed, because in Supplement 7 of Consolidated Freight Classification No. 19, published to take effect May 12, 1950, suspended by I. & S. 5792, they came up with an entirely different set of tolerance rules, and those are the regulations they want, regardless of the outcome of this proceeding, Docket No. 30030. It is my opinion that the publication of a mere set of tolerance rules will not actually minimize damage in a particular shipment of eggs, but will simply shift the burden of responsibility to the owner of the eggs. Five per cent is a tremendous deduction, and yet it is outdone with a proposal of six per cent, together with a general tribute of one per cent from the industry on everything they ship.

For the year 1949 our movement of egg volume was as follows:

104 carloads, minimum weight 33,000 pounds, or 15 per cent of production moved to Eastern destinations.

43 carloads, or six per cent of production, moved to the Southwest. That is the Los Angeles area, this area.

[fol. 770] Ten carloads, or one per cent of production, moved to the Northwest.

Q. What is the minimum weight?

A. 30,000 pounds. Ten carloads, or one per cent of production, moved to the Northwest.

Q. What is the minimum on those?

A. 30,000 also, and I might add there that there is also a 24,000 minimum with a higher rate, so we move on this 30,000 minimum.

Truckloads to those same destinations, plus local and f.o.b. sales accounted for the remainder of 78 per cent.

Of the 104 carloads shipped by us to the East, 33 cars, as shown by Exhibit 46, or 32 per cent, were delivered at destination without damage, as shown by our exhibit, U.P. & F.C. No. 3, while at the very same time other eggs were being delivered in damaged condition. Why? How could that be, except for different in-transit handling? Of the 53 carloads shipped to the Northwest and Southwest Coasts in the same period there was no damage reported to us. Consequently, in the total movement of 157 carloads by rail in the year 1949, which represents about 23 per cent of our egg production, there were 71 cars damaged, or 45 per cent of the total.

For the first six months of the year 1950 our egg volume was distributed as follows:

52 carloads, or 12.3 per cent of production, moved to [fol. 771] Eastern destinations.

83 carloads, or 19 per cent of production, moved to the West Coast by rail.

Truckloads and local sales represented 68.7 per cent of production.

Of the 52 carloads shipped by us to the East thus far in 1950, ten cars, at 20 per cent, as shown in Exhibit 46, were

delivered at destination without damage. Of the 83 carloads shipped to the Southwest and Northwest Coasts in this period, practically all were delivered without damage. In fact, we have reports of only two cars being involved in claims. Hence, in the total movement of 135 carloads by rail for the first six months of 1950, which represents about 31 per cent of our egg production, there were something like 12 cars damaged, or slightly less than 10 per cent of the total. It seems to me, therefore, that a tolerance rule of any amount is wholly unjustified. If some railroads can handle 90 per cent of their egg traffic without damage, and before the inauguration of any specialized preventive practices, they ought to be happy about it and go to work to set their own houses in order.

It should be kept in mind that of the 78 per cent of egg volume handled by trucks during the year 1949, no damage was sustained by reason of rough handling. For six months of the year 1950, when 68.7 per cent of our egg volume was [fol. 772] handled by truck, our experience was similar. Inasmuch as the eggs which moved by truck are candled, graded and packed by the same plants and by the same methods as those which move by rail, we contend that they should be accorded the same treatment in transit. The matter involved here represents damage by breakage, nothing else, except of course that which flows from original breakage; that is leakers, cracks, stains, plus material for repacking and labor. Severe shell damage by rough handling is the cause of this difficulty. That must be so, in light of the performance disclosed in rail movements to the West Coast and truck movements to the same localities, as compared with movements to the East occurring at the same time. Shell damage is the same, whether the eggs are one day old or one week old, and it is caused by improper handling. Eggs do not break themselves.

(Respondents' Exhibit No. 47, Witness McDonough was marked for identification.)

The Witness: Our exhibit, U.P. & F.C. No. 1, Exhibit 47, shows that of the 25 carloads of eggs handled in the year 1949, for which we have a destination inspection report, the percentage of broken eggs to the total eggs per car had a

high of .029 per cent to a low of .00050 per cent, with an average of .0091 per cent. There were 33 shipments reported by our Eastern sales office which arrived without damage, as shown by Exhibit 46.

[fol. 773] Our exhibit further shows that of the 31 carloads handled in the year 1950, for which we have a destination inspection report, the broken eggs had a high of .01 per cent and a low of .00060 per cent, with an average percent of .0062 per cent. This experience certainly gives no credence to the present arbitrary tolerance rule of five per cent, but, on the contrary, strongly points to the inequity of the thing.

Attention is respectfully directed to the fact that with the exception of eight carloads reported in the year 1950, the damage reflected by those reports resulted from what might be termed "ordinary" or "usual" handling, whereas with concerted effort toward specialized handling by interested railroads, we feel that what is almost daily accomplished in the movement of carloads of eggs to the Pacific Coast can be accomplished in the movement of carloads of eggs to the Eastern seaboard.

My opinion is that the present tolerance rule of five per cent is unreasonable and unjustified by the facts which we have attempted to show to your Commission. We believe that the showing of 33 carloads of eggs arriving at Eastern destination in good order and without damage indicates the unfairness of the rule and labels it as a buffer to absorb the cost of carriers' negligence.

Now I might just add to that, Mr. Commissioner, that just a year ago we shipped a carload of eggs by truck to [fol. 774] New York City. That was the first in our experience. Those eggs arrived at destination in perfect condition, except that there were about 15 cases frozen, because the carrier had neglected to properly protect the dry ice, or protect them against dry ice in the load, but there was absolutely no other damage.

Q. No breakage damage?

A. No breakage damage. Our Eastern sales organization wanted to know when we would ship the next truckload to them. I found difficulty in finding gentlemen—I was trying desperately, too—who could truck those eggs with any de-

gree of regularity and provide the refrigeration and protection that they required. For about a year I was not able to locate anyone, until about a month ago. I found an organization which is trucking grain from Nebraska points into Utah by refrigerated trucks that wanted to back-haul to New York. I was able to negotiate with him whereby he would haul at least one load of eggs from Utah to New York City a week. We shipped our first load to him two weeks ago. It arrived at destination, not seventh morning or eighth morning from Utah, as is customary in rail shipments, but on fourth evening out of Utah to New York City. This load was there at six o'clock in the evening, and of course it was delivered the next morning, or fifth morning, and there was no breakage. There was nothing wrong with the shipment. Well, those were eggs.

Comm. Mitchell: You understand, of course, that handling [fol. 775] of eggs by rail to New York is different than on the Pacific Coast, in that they have them floated over.

The Witness: Our eggs are not floated to New York.

Comm. Mitchell: How do they get into New York?

The Witness: We don't handle our eggs through New Jersey. The New York Central takes them right in.

Comm. Mitchell: That is only a small percentage, isn't it?

The Witness: I have had solicitors ask me, on the basis of floatage, for that business.

Comm. Mitchell: You think that trucking is a lot better, don't you?

The Witness: I don't know.

Comm. Mitchell: Why don't you use trucks?

The Witness: I have tried to explain that it is very difficult. We have used trucks. Just remember this——

Comm. Mitchell: I am interested in the transportation. If trucking is the way to handle these eggs, that is what you gentlemen ought to have. That is the way it should be handled, I think.

The Witness: Your Honor, you haven't got a comparable situation in trucks and rails. If we had the same opportunity to ship by rail and truck to New York City today, we wouldn't hesitate that long (illustrating). We would be shipping by truck, because it is our experience, and we owe it to ourselves and to our membership to protect them

[fol. 776] against things of this nature, but we can't do that. Remember, too, that we don't dislike the railroads. We could not get along without them. We couldn't do business without them. Eggs are not the whole amount of business we do. We do a tremendous feed manufacturing business. We bring grains and concentrates from the East and the West.

Comm. Mitchell: Do you use mainly contract shippers?

The Witness: That is the rail movement I am talking about now. In that sort of operation that is practically all rail in to the point of manufacture. Into Salt Lake, where we distribute within a radius of 90 miles, that is done with our own trucks, so it is not a rail operation. We bring carload and carload of roofing materials of all kinds into our supply department. We bring fertilizer.

Comm. Mitchell: By truck, you mean?

The Witness: By rail. This is all by rail. All this movement into Salt Lake is by rail, so we don't think we should have to turn to trucking to protect ourselves. It is not a logical basis for our operation. We are too big for it. It can't help us like the rails do, and we would rather ship by rail than we would by truck.

Comm. Mitchell: Well, if the rails can't handle it it has to give them to trucks.

The Witness: Where is there evidence that the rails can't handle it?

[fol. 777] Comm. Mitchell: Your evidence right now here, of the claims. You got a lower rate on trucking, didn't you?

The Witness: No.

Comm. Mitchell: Contract carriers don't give you special rates?

The Witness: Yes, a contract carrier would.

Comm. Mitchell: Sure. Special service?

The Witness: Incidentally——

Comm. Mitchell: Do they give you special service? Pick up at your plant?

The Witness: Yes. The rails do the same thing. We have cars that stop in transit every day, twice a week; why, surely.

Comm. Mitchell: Do trucks help you load?

The Witness: The train crew does not get off the engine

and help load the trucks, that is true. It is very true, also, that some of the truck operators do not get off the truck and help us load the truck, too.

Comm. Mitchell: Let us take a recess at this time. We will recess until 2:10.

(Whereupon, at 12:55 p. m., a recess was taken until 2:10 p. m. of the same day.)

[fol. 778] Afternoon session

2:10 p.m.

Comm. Mitchell: The hearing will come to order. Do you want to enter your appearance?

Mr. Stilling: If I may.

Comm. Mitchell: Yes, you may.

Mr. Stilling: A. J. Stilling, S-t-i-l-l-i-n-g, 1416 Dodge Street, Omaha 2, Nebraska, appearing for the Union Pacific Railroad Company.

Mr. Root: I would like to inquire at this time who these three railroad lawyers represent?

Mr. Canny: Respondents, all Eastern carriers.

Mr. Root: All Eastern carriers, but not the Western carriers?

Comm. Mitchell: Mr. Stilling, I take it, represents the Union Pacific. That is a western carrier.

Mr. McDonald: Mr. Commissioner, I think the record should show that the carriers of the country generally left the handling of this proceeding in the hands of the Eastern carriers, so I think we can say that we speak for the carriers of the country.

Comm. Mitchell: All right. We will now inform you that they represent the railroads of the country.

R. L. McDonough resumed his testimony as follows:

Direct-examination (continued).

By Mr. Root:

Q. Mr. McDonough, in Exhibits 45 and 47, in preparing [fol. 779] those two exhibits apparently you did not figure

the percentage of the eggs damaged to the cases in which the damage occurred?

A. That's correct. I overlooked doing that.

Q. You have figured the percentage of damage to the carload shipment as a whole; is that true?

A. That is correct. Dozens to dozens in the carload.

Comm. Mitchell: I don't know that I quite understand that. Now what is that?

By Mr. Root:

Q. We will take Exhibit 47, the first item. There were 16 cases that showed external damage. That is the first page of 47. There were three other cases that showed damage, so there were 19 cases showing damage, and there were 29 dozen broken; and they were contained in the 19 cases, I would assume. Now what percentage does the 29 dozen broken eggs bear to the 19 cases which contained 570 dozen?

A. Five per cent.

Q. Now, the 29 dozens showed 16/100ths of one per cent to the total carload; is that true?

A. To the total of 19,200 dozen.

Q. Now this rule we are talking about in this case, as I understand it, does relate to the number of dozen of broken eggs to the number of cases in which the broken eggs were found; is that the way you understand it?

A. That is the way I understand it, yes.

[fol. 780] Q. Not to the carload as a whole?

A. Yes, that is correct, so far as the claim supplement is concerned.

Q. Now is it your desire to figure the percentage of the broken eggs to the cases in which these broken eggs were found and show it on these two exhibits?

A. It seems to me that it would be desirable to do that, in order to fit this thing into the classification rule, but I have not done it generally, because I thought an example such as we have here now in one or two instances might reflect the picture. In other words, there are some instances where five per cent is true, but, depending upon the number of cases involved, the number of dozens that were broken, your percentage varies from five per cent down

to 2.9 per cent, where you have all of the dozens in the car involved, as shown on line 7 of page 2 of that exhibit.

Q. Now would this percentage of the broken eggs to the cases in which they were found, would that rule have any effect on any of your claims that you have filed for damage?

A. It would, and it has been. I have claims in suspense right now, but where an offer of settlement has been made, an offer of compromise or an offer of settlement in the light of this five per cent rule, which I haven't accepted because I haven't been convinced of the equity of the thing, and in view of this pending case I will let that go along. [fol. 781] I haven't moved one way or the other.

Q. Now, would it have eliminated a lot of your claims?

A. It definitely would have eliminated them, yes.

Q. So that on a claim, not very heavy a claim, it would cut it out entirely; is that true?

A. You have an example of that in the first line of this exhibit here. You have 29 dozen broken out of a total of 570 cases, that probably had breakage in them, or did have breakage in them. The 29 dozen came from this 570. They allocated that portion of the damage to 570 dozen, and so you get five per cent. 29 dozen to 570 dozen is five per cent, whereas, if related to the total number in the car to begin with, 19,000 dozen, on which we paid freight charge, the carrier, the loss is 16/100ths of one per cent.

Q. Would the rule eliminate that if it were based on the eggs in the car instead of the eggs in the broken cases?

A. I don't think I understand that.

Q. Well, I will withdraw that, because I think you have not figured these percentages and what effect they would have all told. Now is it your desire, in order to show the Commissioner and the Commission what the effect of this five, four and six per cent rule would be on your claims, to figure the percentage under the rule and insert it in these exhibits, or supply new exhibits to all parties?

A. I have not any desire to do it, but I am willing to do [fol. 782] it if it is found to be necessary.

Q. Don't you think it would be of considerable help to the Commission in deciding this case?

A. I can't say. I don't know how the Commission may look at it, but, as I pointed out, I have three typical ex-

amples of that shown right now. It has been figured. I think all the statements brought out have those three examples. You could carry it further and show it on every one, but it would be relative.

Comm. Mitchell: If you want to do it we will give you the right to do it.

The Witness: If it would be helpful we will do it.

Comm. Mitchell: You make your own decision. If you want to do it, fine; if you don't want to do it, all right.

The Witness: I think we would like to do it.

Comm. Mitchell: You will be given the right to furnish that within 15 days, and furnish a copy to all parties interested.

By Mr. Root:

Q. Now, do you use the Department of Agriculture in making inspections of your eggs?

A. We do, occasionally, depending on the type of sale that we make. Where the purchaser requires it we use the Department of Agriculture inspection service.

Q. Do you pack to the specifications of the Department of Agriculture?

[fol. 783] A. Yes, we do.

Q. Do you ship checked eggs, or leakers?

A. We don't ship the leakers.

Q. You don't ship leakers at all?

A. No. In the course of candling eggs, grading them and so forth, you are bound to encounter checks. You make them, or they are already in the pack.

Q. What is a "check"?

A. A check is an egg that may be broken, or slightly, but the membrane however is not broken, and there may be no leakage from the egg at that time. In other words, with careful handling it still could be transported. Those are the kind of eggs I use in my home. Now we do ship those eggs, principally by truck—I think exclusively by truck—from Utah to Los Angeles, and they reach destination—I think as Mr. Willardson could testify—with no further damage. Checked eggs shipped as checked eggs, reach destination still as checks. There may be a few leakers, but slight indeed.

Q. You ship your checked eggs or cracked eggs or stained or dirty eggs as such?

A. That is right. We don't ship dirty eggs, and we don't ship stained eggs.

Q. Now, it has been intimated here that possibly eggs are not an appropriate commodity for railroads to transport. Do you have anything to say with respect to that?

[fol. 784] A. Well, I think that in my direct testimony I undertook at least to say that I had recently been in correspondence with the vice-presidents of 17 major railroads, including those that go east and west of Chicago, and with the exception, as I can recall, of only one of those railroads that happened to operate both east and west of Chicago, I had statements from every one of the western lines that they would be delighted to continue to handle our business; but in only one instance of an eastern line did I receive any encouragement whatever, and it was from a large eastern carrier.

Q. Which one was it?

A. It was the New York Central; and Mr. Alger, vice-president of traffic, told me on at least one occasion, perhaps two or three, that they were appreciative of the business that we were giving them, and had given them, and they wanted to continue to do in whatever way they could, or to improve the handling of the eggs, to prevent this situation. He realized that the railroads had a problem and the shippers maybe had a problem, but he further said that in his experiences with the Utah Poultry Association he thought perhaps we would not be amenable to the difficulty that confronted the transportation people at the present time. I let the matter go. I haven't answered Mr. Alger's last letter, but he intimated—this indicates to me that he wants to do something that will help this thing. I want to say here, in my testimony I referred to the use of [fol. 785] private cars. I don't know whether Mr. Alger would want me to say this or not, but I think I can do it because it does not disclose anything at all. He asked me in his last letter, I believe, if I had given consideration to the use again of private cars, as we used back in the 1930s, and intimated that that perhaps was a source of difficulty here. That is really why I alluded to it in my testimony.

I think that is all I have to say.

Q. Any other railroad west of Chicago?

A. Yes, I mentioned that. There are a number of them. I had no railroad that did not indicate a desire to handle our business, and one railroad, and I might mention the Union Pacific, the vice-president and general traffic manager consulted with me on this matter, and they felt that with proper supervision they could do a good job. They could prevent handling, but they realized that it took coordination between them and their connections. Following that very thing, they wrote their connecting lines and told them that as a result of the conference we had with them—told them of what we proposed to do. We propose to set this up on a trial and error basis. We would give them an opportunity for a certain period of time to show them what they could do. If no improvement were shown we would have to use some other line or lines, with the idea that we might ultimately discover a group that would give us service without damage.

[fol. 786] Q. Has the Union Pacific manifested any interest in recovering the shipments of eggs from Utah to California, southern California?

A. Yes, they have.

Q. Have you done anything about it?

A. Yes. They have done that. They have reduced, independently, the rate from Utah common points as far north as Preston, Idaho, into Los Angeles; and the Union Pacific stood alone in this thing, because they realized that if they did not they would not have recovered the egg business. We did everything that we reasonably could to respond to it and restore to them the business, or at least a portion of the business that had been lost to the trucks. Right today we are doing that very thing.

Q. Is there anything else that you care to say?

A. I think not.

Comm. Mitchell: Cross-examination?

Cross-examination.

By Mr. Canny:

Q. Mr. McDonough, can you tell us what routes were used on your Exhibits 45, 46 and 47 to New York? At least what was the destination carrier, if you know?

A. I haven't that information. I could give you roughly, according to the origin of the route that I used. Now I can tell you exactly. I have the original report from which these Exhibits 45 and 47 were made. I can give it to you [fol. 787] off of the report, the exact routes it handles.

Q. Well, does the same road handle all of them?

A. No.

Q. You had more than one destination carrier in New York?

A. I would not say that we did have. I don't know.

Q. Well, generally speaking.

A. Generally speaking the destination was New York on the New York Central.

Q. And do you know whether or not those cars were floated or whether they went down the west shore and were floated over?

A. I don't know, but I am certain that none of them were floated.

Q. How do you know that?

A. Well, it has been our practice not to float them.

Q. You don't know what they do in New York, do you?

A. I have been there a few times.

Q. But you haven't seen all these cars delivered?

A. No, sir, I have not seen all of the cars, but I am familiar with the operation.

Q. Now, on page 4 of your testimony you talked about 33 cars, or 32 per cent of the carloads delivered to the East were delivered without damage; is that right?

A. That is right.

Q. Now can you tell us whether or not those cars were all inspected before shipment? By that I mean were all the [fol. 788] leakers taken out and all the checks and all the stains?

A. No. You mean was there a special preparation of those cars? No.

Q. Did they have a USDA inspection?

A. They did not.

Q. On any of them?

A. None.

Q. Then would it be possible that some of those damaged eggs were in the cases before they were delivered to the railroad?

A. It's possible.

Q. Wouldn't that be the answer to your question "Why?" in the third line of that paragraph? At least it might be a partial answer?

A. Just a moment. What page is that on?

Q. Four.

A. I would have to say yes.

Q. Now getting over to page 5, the last paragraph, you are talking about Exhibit 47. You said you had a destination inspection report. Who made that destination report, if you know?

A. The R.P.I.A.

Q. And they gave it to you?

A. Yes.

Q. I have only one more question.

A. I showed the source all the way. It shows R.P.I.A. [fol. 789] inspection on page 4, right here (indicating).

Q. And you think that because you—because when you did use these special refrigerator cars in the past that that reduced your damage claims?

A. I did not go back into the record that far to determine just what our claims were, but it is my opinion that we had a very favorable claim experience at that time.

Q. When you were using those special cars?

A. When we were——

Q. You had different rules at that time, too, different classification rules at least as far as New York was concerned?

A. Yes. I think New York had a special rule at the time on the egg claims.

Q. Then would you say that the cars themselves were not the answer to your low claims?

A. I would not say that the cars were the answer. I

would say that the cars could have been a potential feature involved in handling.

Q. Do you think that the railroad should provide special cars or special equipment in the transportation of eggs?

A. No, I don't. They did not in our case. Private car companies did that.

Q. Getting over to your last page, 6, the second paragraph, you talk about railroads; if they put in concerted effort towards specialized handling you would have a better [fol. 790] claim record. What do you mean by that?

A. I mean that the switchman, train crews, should understand that they are handling eggs, not brick or pig iron, and they must handle them accordingly. They must put them in the head end of the train; they must switch them with the air; they must not be dropped or kicked around in switching.

Q. Are you a railroad man yourself, or were you ever a railroad man?

A. Yes, I was a railroad man.

Q. Did you work in the switch cars?

A. I worked in the claim department.

Q. You never generally went out and operated a railroad, or switched cars, did you?

A. No. I thought I could do a better job.

Q. You think that in the handling of eggs the railroads should handle them a little differently than they handle any other kind of commodity?

A. I think they should do it differently than they handle pig iron or gravel or some inert thing. I do.

Q. And that is that specialized handling you are talking about?

A. That is what I mean. I may say that in the letters I have had from vice-presidents I have not had anyone that disagreed with that thought, and that is what it might take.

Mr. Canny: That is all.

[fol. 791] By Mr. McDonald:

Q. Mr. McDonough, on page 2 of your prepared statement, the first paragraph beginning on that page, you comment on the fact that the railroads did a pretty fair job of selecting cars for you, but that it was impossible for them

to make a selection on the basis of spring and draft gear equipment of the car?

A. Yes.

Q. Did you yourself make any check of that sort of thing so far as you were concerned?

A. At the time we were using it?

Q. Yes.

A. No; no. We depended upon the car company from which we leased the car to do that thing for us.

Q. Have you at any time since made that sort of a check or kept any kind of a record?

A. No. That is pure assumption.

Q. So that you would not be able to testify from your standpoint that even that would be a serious factor to be considered, would you?

A. No, I couldn't say that it would be.

Q. I just want to call your attention to page 3, the fourth line from the bottom, of your prepared statement. I think there is a typographical error that you would want to correct. ". . . railroad, in switching and handling cars with air . . ." Is that "air" correct? Do you mean "air" or "with care"?

[fol. 792] A. With air.

Q. Now page 4, the first paragraph on page 4, and subsequently throughout your statement, you are speaking of the five per cent tolerance rule. That is the one presently in effect, is it not?

A. That is correct.

Q. And that is limited in its application to shipments of so-called current receipts or graded eggs; isn't that correct?

A. That is right.

Q. As a matter of fact, does your association have any shipments, or any substantial part of its shipments which consist of eggs of that particular category?

A. Graded eggs?

Q. Graded eggs or current receipts, within the meaning of the present tariff?

A. No.

Q. So that any testimony that you have given here in that

respect you are testifying about something that you have not had any shipments in that category; isn't that so?

A. No, that is not so. Refer to my Exhibit 46 for example.

Q. Were any of those shipments of graded eggs or current receipts within the meaning of the present tariff?

A. No.

Mr. Rynder: Mr. Commissioner, I would like to say that a certain amount of this evidence is being offered in the hope [fol. 793] that it will be considered in connection with the suspension case.

Mr. McDonald: I assumed as much. I am not sure that when he talks of five per cent that that is the present rule, and I want to make sure that the record is clear in that respect, Mr. Rynder.

By Mr. McDonald:

Q. On page 5 of your prepared statement you have a sentence which starts out, "Inasmuch as the eggs which moved by truck are candled, graded and packed and so forth by the same methods as those which move by rail, we contend that they should be accorded the same treatment in transit." You are not implying there that a movement by truck is the same in operation as a movement by rail, are you, Mr. McDonough? You were not?

A. Hardly. No.

Q. You would not suggest, either, that whatever might be true with respect to truck handling would of necessity have to be true with respect to rail handling, would you? In other words, you recognize the essential difference of the two types of operation; isn't that so?

A. Well, there are many essential differences in type of operations, but eggs that are handled in a truck do not get a featherbed ride, and there is a lot of oscillation there, but we don't get any breakage. That is the point I am making, as related to rail movements. That is the point I was trying [fol. 794] to make.

Q. As a practical matter, eggs handled by truck move from origin to destination without anything like the equipment of a connecting line carrier interchange, yard switch, and that sort of thing?

A. That is right.

Q. You never had a shipment that had to be transferred?

A. Oh, yes.

Q. By truck?

A. Oh, yes.

Q. Didn't they move——

A. That is not the rule.

Q. What is that?

A. As a rule they move through in the same truck.

Q. Generally speaking that would be true, wouldn't it?

A. Generally speaking I think that is true.

Q. Just a line or two below that you say, "Severe shell damage by rough handling is the cause of this difficulty." You don't know that rough handling is the only cause of your difficulty, do you, Mr. McDonough?

A. No, we don't know that it is the only cause.

Q. That is an assumption you are making there?

A. We made it on the basis of our experience.

Q. It could be the difference in the size of eggs now as distinguished from five, ten or 20 years ago, or a difference in [fol. 795] the size of the crate, or some other factor, couldn't it?

A. It could, but I think not.

Q. This may be repetitious, I am not sure. I understood from a question I asked you a moment or two ago—let me start this way. At the top of page 6 you refer to your exhibit, stating that it shows 31 cars in 1950, and say that this experience certainly gives no credence to the present arbitrary tolerance rule of five per cent. That is the present rule you are speaking of?

A. That's correct.

Q. I do understand now, for the sake of clarity, that you had no shipments which were properly subject to the five per cent tolerance rule; isn't that so?

A. No, that is not so. I did have some and, as I stated——

Q. Excuse me. Any one of those 31 cars?

A. No, none of those were involved.

Q. Of the five per cent tolerance rule, the present one applies only, as I understand it, on shipments that are trucked beyond the railhead; isn't that right?

A. That is right.

Mr. McDonald: That is all I have. Thank you.

Mr. Zearfaus: I only have a couple of questions, sir.

By Mr. Zearfaus:

Q. I gather from the testimony of the previous witnesses that one of the reasons why the trucks were being used, rather than the rails, was speed in transit, or time in [fol. 796] transit. Am I correct in understanding that so far as your association is concerned time in transit is a minor point to be considered?

A. At the present time it would be, but it would be an element, of course, where markets were different. We may have a marked decline. Where a market fluctuates speed is quite an element, and you want that. You get that in trucks; that is, faster service by truck than you will by rail. If you are moving to a market that might drop, you want to get there as quickly as possible, so a truck is preferable.

Q. Therefore, as a general proposition, time in transit is a very important thing to you?

A. As a general thing that is right.

Q. Now, at page 5 of your prepared statement, in the second paragraph you talk about 78 per cent of the egg volume handled by trucks during the year 1949 showed no damage as the result of rough handling. Did any of those shipments of that 78 per cent move to New York City?

A. No, they did not.

Q. Did some of them move by common carrier?

A. Yes.

Q. And some by contract carrier?

A. Correct.

Q. Can you give us the relative percentages of the two?

A. It would be a wild guess.

[fol. 797] Q. Approximately.

A. I would say probably 80 per cent by contract carrier and 20 per cent by common.

Q. 80 per cent by contract. Now these shipments which you mention on your Exhibit 46, that you say arrived in good order, if they had arrived in bad order would they

have been such shipments as your association would have filed claims upon, or would it have been the consignee?

A. Our association would have filed.

Q. Your association would have filed?

A. That is right.

Q. Now, when you say they arrived in good order, does that mean that they may have had some damage, but probably not enough to justify a claim?

A. I could not say. I could not answer that directly. The information was furnished by our New York office, at my request, and I simply accepted it at its face value.

Q. Your association does not file a claim every time you have a small amount of damage to a carload of eggs?

A. No, that is right.

Q. It is possible that there may have been some damage in connection with these cars that you say arrived in good order, is that true?

A. That is true, but they were still marketable, and moved in the same condition in which we shipped them, for all in-
[fol. 798] tents and purposes.

Q. Do you consign these shipments to New York to yourselves?

A. That's right.

Mr. Zearfaus: That is all, Mr. Commissioner, and thank you, Mr. McDonough.

Redirect examination.

By Mr. Root:

Q. Mr. McDonough, in packing your eggs do you pack any differently for truck shipments than you do for rail shipments?

A. No, we don't.

Q. Do you pack any differently for westbound shipments than you do for eastbound?

A. No, sir.

Q. Eggs are eggs; is that right?

A. Well, there are kinds of eggs, but there are eggs and eggs of certain kinds, and we pack them accordingly, whether they are going east or west. At the time we pack

them we don't know where they are going. The man who does that work does not know where they are going, east or west.

By Mr. Rynder:

Q. Mr. McDonough, I gather from your testimony that you did suffer much greater damage to rail cars destined to New York than those destined west from Salt Lake City; is that correct?

A. That is right.

Q. Does that fact lead you to reach any conclusion as to [fol. 799] where the cause of the damage may exist?

Mr. Canny: I object to the question.

Mr. Rynder: Well, if you object to such an obvious thing——

Comm. Mitchell: Go ahead. Go ahead and answer. Objection overruled.

The Witness: Naturally it leads me to the conclusion that the trouble is with the lines east of Chicago.

Mr. Rynder: That is all.

By Mr. O'Barr:

Q. Mr. McDonough, did I understand you to amend the percentages as shown in column 10 on your Exhibits 45 and 47, by moving over the decimal point?

A. No. I will add another column, showing the relationship of the dozens of eggs broken to the actual number of cases from which that damage came, not as related to the total dozens in the car when shipped. The report is set up on that basis.

Comm. Mitchell: Is that all?

Mr. O'Barr: Thank you.

Comm. Mitchell: Thank you, Mr. McDonough.

(Witness excused.)

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Vol. II

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(Pages 837 to 1288)

Supreme Court of the United States

OCTOBER TERM, 1954

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SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. [redacted] 7

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vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

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UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT AND COMPANY, APPELLANTS,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

NO. 171 & NO. 172—FILED JUNE 25, 1954

NO. 282 & NO. 283—FILED AUGUST 13, 1954

PROBABLE JURISDICTION NOTED OCTOBER 14, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 171

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

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No. 172

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vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 282

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 283

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

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DRUE WILLARDSON was sworn and testified as follows:

Direct examination.

By Mr. Root:

Q. You may state your name, please.

A. Drue Willardson of Willardson & Co., Inc.

[fol. 800] Q. What is your employment?

A. We are the sales representatives, exclusively for the Utah Poultry & Farmers Co-operative in Los Angeles.

Q. Are you a corporation or a partnership?

A. A California corporation.

Q. A California corporation. What are you, general manager?

A. The president of the corporation.

Q. You are the president. Do you supervise the work or the operations of your corporation?

A. Yes.

Q. You are familiar with all of the operations that you perform?

A. Yes, I am.

Q. Are you the sales agent or agency for the Utah Poultry & Farmers Co-operative?

A. Yes.

Q. Do you receive shipments of eggs from that concern at Salt Lake?

A. Yes.

Q. In Utah. And you have heard the testimony of Mr. McDonough?

A. Yes.

Q. Is there anything that you would care to add to it, in relation to the business that you are performing?

A. We have had a very favorable experience in the shipment of eggs from Utah, both as regards rail and truck shipments. I have prepared our claim experience in 1948 and [fol. 801] 1949, both as to rail and truck shipments. In 1948 we received 80 rail shipments, which represented 21 per cent of the total volume received in this market from the association. Our total claims in 1948, for those 80 rail shipments, amounted to only $103.72, which is, I believe, 13/100ths of one per cent of the damaged eggs. In 1949

we received 40 rail shipments, which represented 15 per cent of the total volume shipped from Utah, and of those 40 rail shipments there were no damaged eggs or no claims filed.

Now referring to truck shipments, I have a record in 1948 of 384 truck movements, representing 79 per cent of the total volume shipped, and the claims on those truck shipments in 1948 totaled, by one truck line, $276.84, and of another truck line $15.25.

In 1949 we received 305 truck shipments, which represented 85 per cent of the total volume received from Utah. Our claims for 1949, on one truck line amounted to $64.50; on another truck line $191.77, and on a third line $7.59.

In 1948, I believe that figure broken represents 11 1000ths of one per cent of damaged eggs by truck.

Q. How do you express that?

A. I express that .00011 of one per cent.

Q. Thank you.

A. In 1949 the figure is 36 1000ths of one per cent by truck.

Now I have in further detail the amount of cases damaged [fol. 802] by the year, if there is any interest in the discussion of same, and I would like to point out that the truck shipments do not represent the full 600-case shipments. In part some of those truck shipments represented a minimum of 25 cases, and it was our experience that in those LTL loads we received no more than the average damage than in the 600-case shipments.

Q. You mean on the LTL shipments the damage was no greater than it was on the straight truckloads?

A. That is correct. I would like to further clarify, which is very important, that where we have the largest claim in 1948 against the truck lines, those claims do not represent the salvage. When the truck has been unloaded and we determine that there is—I have a specific example—ten cases showing damage, the truck line had the option of taking the entire ten cases back to their own warehouse, in which they would re-candle or re-inspect or sell those eggs, and we claimed for the total amount of those ten cases. Had we been allowed to recandle them ourselves, sell the salvage and claim for the total loss, our claims would probably have been reduced to another $180, maybe less than that.

I would like to point out that the actual loss occurred where we received frozen eggs in the case, or one or two cases dropped accidentally by the driver, but the large claim that I have reported here includes ten and 15-case amounts, where the truck line elects to take back the cases and sell the [fol. 803] eggs to their own employees, or to keep them for what purpose they desire.

Q. Is there anything else that you have that you would like to tell the Commission?

A. Our record of rail shipments from the Utah association through Los Angeles to the San Diego area, it is my understanding that there have been no damages occurring, and there have been no claims presented, and I believe there is a witness here today from that area who can further stipulate on that performance.

Q. If there were claims presented on these San Diego shipments who would present them?

A. It would be through our office.

Q. Through your office?

A. We do the billings, and should there be any claim we would present the claim.

Q. Have you had notice of any claim?

A. We have received no notice of damaged eggs, or claims.

Q. So that you assume there is no damage and no claims?

A. I assume there was no damage, and we have had satisfactory experience in that area.

Q. If there were claims presented, they would be presented in your name?

A. Through our office.

Q. Through your office?

[fol. 804] A. Yes.

Q. And in whose name? Would it be the receiver down there?

A. It would be in our name, and we would remit the claim collected to the association.

Q. At Salt Lake?

A. At Salt Lake City.

Q. Is there anything else you can think of?

A. I have nothing further to offer.

Mr. Root: That is all.

Comm. Mitchell: Cross-examination.

Cross-examination.

By Mr. Canny:

Mr. Willardson, I notice that in 1949 your shipments by rail, issued claim damage, was very much better than it was in 1948. That being so, why did you increase your truck volume from 79 per cent to 85 per cent in 1949 over 1948?

A. Even though there were no claims against the railroads in 1949, we increased the traffic by truck because of the definite advantages in moving the eggs via the truck lines.

Q. What are those advantages?

A. The time factor is of greatest importance, overnight shipments by truck, and service of the truck lines in unloading and sorting of grades.

Q. You mean the truck lines do that for you?

A. Yes. The convenience of spot deliveries in the city.

[fol. 805] Comm. Mitchell: Do they make an extra charge for that unloading and grading of eggs?

The Witness: Is grading sorting?

Comm. Mitchell: Sorting of eggs.

The Witness: They present no bill to our company for such services.

By Mr. Canny:

Q. How about the spotting? Do they make an extra charge for that?

A. No, no. There is a distinct disadvantage of the service into Los Angeles from Utah on the rails, in that after the car has been received in the yards in Los Angeles it goes to the icehouse, and from there to the Butte Street steam track and the S.P. takes it and brings it to our team track for unloading; and sometimes the car will be in town for a day, a day and a half before they have located the car that we need to bring it over to the team track. It so happens that in our area there is only a certain time of the day that a diversion may be made, as spotting of a car may

be made, and if we need eggs any time after 10 o'clock in the day we are lost. We have to wait until the following day, or evening, when the diversion may be made, and we have lost several egg cars right in our own team track area.

Q. Now, do you use both common and contract carriers from Utah?

A. I presume there are both.

Q. You don't know?

[fol. 806] A. I have no knowledge.

Q. I am talking about truck now.

A. I understand.

Q. Now do the trucks make split deliveries for you?

A. Upon request they will do almost anything.

Q. Of your damages by truck, of those figures you gave us, how much of that was for shorts, if you know?

A. Shortages?

Q. Yes.

A. I didn't record the shortages.

Q. Were there some shortages that you know of?

A. A shortage occasionally occurs where the plant is unable to put on the last five or ten cases; and where a definite shortage occurs we don't enter the claim as such.

Q. Now when the truck line recandles the eggs, who pay for that?

A. The truck line takes back the eggs. We bill them the full market price.

Q. The full market price, or your invoice price?

A. The full market price. Our invoice price to the trade. May I illustrate that in detail for you?

Q. Yes.

A. Should the last 15 cases on the truck show some signs of internal damage, where there is leakage, the truck line will set aside the entire 15 cases and take them back to their [fol. 807] own dock. We would charge them the full market price on the full 15 cases. If we were allowed to recandle the 15 cases on our floor, the damage may only have been one-half of one case total loss. Therefore our report, our file claims, show a total of $650 for two years' operation. We could cut that down to $250 for two years if we knew the exact amount of loss.

Q. Do you ship to New York City?

A. No.

Mr. Canny: That is all.

Mr. Zearfaus: I have one question.

By Mr. Zearfaus:

Q. Mr. Willardson, based upon your past experience in damage claims, both by rail and by truck, almost any tolerance rule would not hurt you very much, would it?

A. It would not.

Mr. Zearfaus: That is all. Thank you.

Mr. Staley: I have one or two questions.

By Mr. Staley:

Q. Mr. Willardson, do you receive checked eggs from Utah?

A. Yes.

Q. Are they packed in regular cases?

A. Yes.

Q. Every egg in the case is checked?

A. Yes.

Q. When they get into Los Angeles what is their condition?

[fol. 808] A. Checked eggs, labeled as such in Utah, and received as such in Los Angeles.

Q. Are some of them leaking when they arrive?

A. Occasionally we will find a few leakers in the case.

Q. Approximately how many per case?

A. I have no figures to substantiate. I would merely guess that it's one per cent.

Mr. Staley: That is all.

Comm. Mitchell: Mr. Willardson, your main desire to have your eggs shipped by trucks is because you get special services, isn't it, by trucks?

The Witness: Yes.

Comm. Mitchell: Speed?

The Witness: Speed; overnight service.

Comm. Mitchell: Special handling?

The Witness: Yes.

Comm. Mitchell: Special delivery?

The Witness: Yes.

Comm. Mitchell: For all of you pay no extra charge?

The Witness: Correct.

Redirect examination.

By Mr. Root:

Q. No tolerance rule?

A. No tolerance. There are advantages to rail; I do not wish to completely eliminate the advisability of shipping eggs by rail. We have just found it to our advantage to [Vol. 809] ship by truck.

Comm. Mitchell: In other words, if the rail is going to compete with trucks, they have to meet the competition of the trucks, haven't they?

The Witness: Yes, they have.

Comm. Mitchell: And they have got to have the right to perform special service?

The Witness: Yes.

Comm. Mitchell: That is all.

Recross-examination.

By Mr. Canny:

Q. These checked eggs that Mr. Staley asked you about, are they by truck or rail?

A. By rail. They are shipped as checked eggs, labeled as such.

Redirect examination.

By Mr. Root:

Q. Of course, Mr. Willardson, the shipper pays the freight, does he not?

A. Yes. I might point out that it is not entirely our election as to what mode of service is used, whether truck or rail. Since the co-op handles all shipments and bills of lading and payment of freight bills, we abide by whatever transportation they elect to use.

Comm. Mitchell: But you were giving your opinion that on account of the special services you would like truck? You don't care what the co-op likes?

[fol. 810] The Witness: We are satisfied with the truck service.

Recross-examination.

By Mr. Canny:

Q. What are those rail advantages you spoke of?

A. Certain advantages of the two-day demurrage privilege of unloading. Many times when you don't need the eggs on the day they arrive we have the privilege of waiting for a day or so.

Q. Won't the truck lines do that? Isn't it a common practice for a truck line to bring in a whole trailer full of eggs and take it to your dock and leave it there for you to unload?

A. It depends on the truck line. By close cooperation, where you are doing a great volume of business they will accommodate you almost as long as the demurrage privilege, but many of the truck lines must have their equipment for unloading the same day.

Q. It is all in accordance with the amount of business you give the truck line. If you give them a lot of business they will be more liberal with you in their rules?

A. It may follow.

Mr. McDonald: But rail demurrage is available to you at any time?

The Witness: Yes.

Mr. McDonald: Is there any other advantage, other than this demurrage privilege you are speaking of? From a [fol. 811] rail standpoint, I mean.

A. I can think of none at the present time.

Mr. McDonald: Thank you.

Comm. Mitchell: That is all. Thank you.

Witness excused.

Comm. Mitchell: Call your next witness.

Mr. Root: I don't have any more.

Mr. Rynder: Mr. Nielsen.

C. NIELSEN was sworn and testified as follows:

Comm. Mitchell: Will you give your name, address, and your occupation to the reporter, please?

The Witness: C. Neilsen, N-i-e-l-s-e-n, Arden Farms Company, San Diego, 1136 K Street. I am buyer and manager of the egg division.

Direct examination.

By Mr. Rynder:

Q. Mr. Neilsen, what business is your company engaged in?

A. We are in the dairy business: Ice cream, milk and eggs.

Q. In the egg business?

A. Yes, fairly large in this section.

Q. Throughout this area, Los Angeles down to San Diego, and so forth?

A. Yes.

Q. Where do you principally receive your shipments of eggs?

[fol. 812] A. Where we buy them, or—we receive them in San Diego.

Q. You receive them in San Diego?

A. Yes.

Q. Where are they shipped from?

A. From Utah.

Q. What has been your experience with rail shipments?

A. It has been very good. In 1944 we had five carloads; in 1945, 20; 1946, 59; 1947, 51; 1948, 40; and in 1949, 18. We discontinued the rail shipments in May of '49.

Q. And what was your experience as to damage? First, how many rail shipments were those all together?

A. 193 carloads.

Q. And what was your experience as to damage on shipments?

A. We never had any damage that we could turn a claim in for.

Q. Did not?

A. No.

Q. No damage.

A. We had one that accidentally was brought through L.A. yards here. That was in August, 1947, and it showed as though it might have damage; but I called Mr. Mandell, the agent, and he asked us to go ahead and look at it. When we got to look at it there was no damage other than the tops of the cases. No egg damage.

Q. Did you examine those shipments?

A. I examined all of them.

[fol. 813] Q. You examined them carefully to see whether there was damage?

A. Every carload that comes in.

Mr. Rynder: I believe that is all.

Comm. Mitchell: Cross-examination.

Cross-examination?

By Mr. Canny:

Q. Mr. Neilsen, I notice at least since 1946 your shipments by rail have been constantly decreasing. Can you give us the reason for that?

A. Well, that is on account of our production in San Diego getting a little heavier. We did not need that many eggs.

Q. In other words, you are buying them locally?

A. Yes. We buy quite a few locally.

Q. Did you receive any?

A. We received, since May 1949, we have received 61 car lots by truck, direct shipments, and that would be a contract carrier.

Q. How many did you say?

A. 61 car lots.

Q. Is that about 600 cases per car?

A. If it is in wood it is 630; if it is in paper it is 654. If it is in wood in a car it is 600, and if it is in paper it is 640.

Q. Why this sudden switch in May, 1949, from the rails to the trucks?

[fol. 814] A. We happened to switch sources, and they prefer to ship by truck.

Q. Do you control the routing?

A. I could have said yes or no, but we had it shipped by truck, so we did and found it very good.

Q. These 61 car lots that you received since May, 1949, where do they originate?

A. Some place. Salt Lake; in that vicinity.

Q. Then you don't have much interest in this proceeding here today, if you don't receive anything by rail at all?

A. We are like the rest of them, we have received by rail. If we go back to the other company we go back to the rail.

Mr. Rynder: Counsel seems to overlook the fact that this rule has been suspended.

Mr. Canny: This is cross-examination, Mr. Rynder. I will ask him the questions, not you.

Comm. Mitchell: Go ahead.

Mr. Rynder: The witness ought not to be misled, because this rule does apply, suspended, to hundreds of truckers out here.

By Mr. Canny:

Q. You use contract carriers at the present time?

A. Yes.

Q. Do you know whether or not that rule applies to contract truckers?

[fol. 815] A. I don't know a thing about contract or railroad or anything else. I just know that we get so many eggs, and we haven't had any trouble, and we might return to the railroads tomorrow. We have nothing against them.

Q. Based on your past experience you would not have a claim, even if they had a rule in effect?

A. We could.

Q. You haven't had any?

A. How do we know when the railroads will get rougher, or the trucks will get rougher?

Q. Have you heard the other witnesses here today?

A. Yes.

Q. How do you account for the fact that you don't have any claims, where the rest of them did?

A. I don't think the rest of them had much claims. It just happens that our cars are turned from the Union Pacific to the Santa Fe at San Bernardino, and they don't go through these larger Los Angeles yards. We know all our switchmen down there by their first names. They are very careful with our eggs.

Comm. Mitchell: It is the personal contact that you have with the employees; is that right?

The Witness: I think a whole lot of it is, yes. We have also taught them how to handle eggs in their cars, a lot of them.

[fol. 816] Mr. Canny: That is all I have.

Comm. Mitchell: How many people are there in San Diego?

The Witness: What do you want? Chamber of Commerce figures?

Comm. Mitchell: Yes.

The Witness: San Diego, 391,000.

Comm. Mitchell: 391,000?

The Witness: Yes, sir. They are recounting now. We claim over 400. When all these fishermen come down out of Los Angeles we run close to 500,000. We invite everyone down there, except egg men.

Comm. Mitchell: All right. Let us go on.

Mr. McDonald: That is all, I guess.

Mr. Zearfaus: We have no questions.

Comm. Mitchell: Thank you.

Witness excused.

Comm. Mitchell: Who is your next witness?

Mr. Rynder: Mr. Fond.

M. E. Fond was sworn and testified as follows:

Comm. Mitchell: Will you give your name, address and place of residence to the reporter, please?

The Witness: M. E. Fond, 2145 Sacramento Street, Los Angeles.

Direct examination.

By Mr. Rynder:

Q. What is your business?

[fol. 817] A. I'm a distributor for the Draper Egg Producing Association, Draper, Utah.

Q. Is that a co-op, or what is it?

A. It is a co-op, similar to the Utah Poultry Producers.

Q. I take it that it is not as large in its operations?

A. No, it is not.

Q. And you distribute their products in the Los Angeles area?

A. Well, the Pacific Coast area. We take in the state of Arizona and northern California, and go as far as Portland and Seattle.

Q. What I want to get at as quickly as possible is this: What has been your experience in that business in connection with damage to eggs handled, either by rail or by truck?

A. Well, we in 1949 handled approximately 400 cars, out of which only about 20 were shipped by rail. The balance of them were shipped by both contract and common carriers. However, a shipment is made out of Utah, out of the one point, and don't have much to say to the manner in which they are to be shipped. I can suggest if I ever want a rail shipment for various reasons, but mostly we have had very good success on these truck shipments, both from the standpoint of time involved and least possible breakage.

Q. Do you recall what your experience was on damage on rail shipments?

A. Well, practically none.

[fol. 818] Q. And the same thing on truck?

A. The same thing on rail as on truck. About the only damage we ever had was some that was caused by negligence of the driver, being careless when unloading, dropping a case or two, on which we, part of the time, stand the cost; but the percentage of rail shipments being so small out of our total tonnage—as a matter of fact, I don't even remember having to make any claims in the last two or three years with the Union Pacific Railroad, who is the only carrier from our district.

Mr. Rynder: I believe that is all, Mr. Commissioner.

Cross-examination.

By Mr. Canny:

Q. Mr. Fond, what did you mean that part of the time you bear the cost, even though there is some damage?

A. At times we impose upon those truck drivers, con-

tract carriers. They do several little missions for us that are not called for, like making a second delivery, and in appreciation of that at times, if they should happen to drop a case of eggs, where the damage might not involve over $5 or $6, we stand the cost. We let it go at that, because they do certain little things for us, and that is our way of showing our appreciation.

Q. Can you go back over a few years and give us some idea of what your shipments were by rail, as compared via truck? You only gave us '49.

[fol. 819] A. Well, unfortunately I came up here unprepared with actual records. I can, however, in a short time, produce all of our exact records; but we have always shipped by truck, more so then we did by rail.

Q. Apparently at the present time you are receiving them by truck, and you are satisfied with that service?

A. Yes, we are.

Mr. Canny: That is all I have.

Comm. Mitchell: Further cross-examination?

Mr. McDonald: No further cross-examination.

Comm. Mitchell: Any other cross-examination?

(No response.)

Mr. Rynder: I think, Mr. Commissioner, that is all I have.

Comm. Mitchell: That is all, Mr. Fond.

(Witness excused.)

Comm. Mitchell: Is there anyone else here that would like to present any evidence which would be material to the matter before the Commission in this case?

Mr. Staley, have you anything to say?

Mr. Staley: No, sir, except that I concur in the thought that this record ought to be consolidated, or treated in such a way that the record in this case can be used in the I. & S. case.

Comm. Mitchell: I asume you will be in Chicago?

Mr. Staley: Yes, sir.

[fol. 820] Mr. Matson: Mr. Commissioner, I would like to call attention to the fact that throughout the various hearings there have been requests that the railroads, respond-

ents, supply certain information, and I don't think that that has all been supplied yet.

Mr. Canny: What information did you ask for?

Mr. McDonald: What in particular do you have in mind, Mr. Matson?

Mr. Matson: There is just a vague recollection. The only thing that I recall was a request made by Paul Blanchard, and I think that was made at the New York hearing, or maybe in Chicago, but I am fairly certain that there are one or two items of information which were supposed to have been filed. I assume the railroads can go through the record and pick up those things and send them in some time or other, but we rather anticipated that we would have it by this time.

Comm. Mitchell: I don't know of anything except the bringing up to date on the condition of the losses in New York. That was to bring up to date the amount of losses you paid, including the year 1950.

Mr. McDonald: Yes, sir, we expect to do that. We didn't think that it was necessary to bring a witness all the way out here just for that.

Comm. Mitchell: No, it was not necessary, and you can do that at the Chicago hearing. I don't know of anything [fol. 821] else. It does occur to me that Mr. Blanchard asked for something.

Mr. McDonald: Suppose we leave it this way: That we will be glad to check, and if Mr. Matson finds something that we overlooked to do, Mr. Stilling would like to take care of that, as an interested party. We will take care of anything with him.

Mr. Root: Shouldn't the railroads say what they have done towards elminating this rough handling at New York that causes that damage?

Mr. Canny: We don't admit there was any rough handling at New York that caused any damage.

Mr. Root: You don't admit it?

Mr. Canny: No, sir. There is no proof that it was, either.

Comm. Mitchell: That is up to the railroads. On the record made out they would deny that, I suppose. The question is whether there is any proof of it. They can, of course, bring that up at the Chicago hearing.

Mr. Root: I won't be at the Chicago hearing, and I want to get as much information as I can here.

Comm. Mitchell: Are you familiar with the whole record in this case?

Mr. Root: No, I am not. I never attended any hearings.

Comm. Mitchell: Have you a transcript of it?

Mr. Root: No, I haven't.

[fol. 822] Comm. Mitchell: That is a good way to get familiar with it.

Mr. Ryndef: Mr. Commissioner, if you would like to close the record, I would like to say that my clients wish to express deep appreciation for having this hearing out here.

Mr. Greene: I would like to add our confirmation of that, on behalf of our association and members.

Mr. Root: The Utah interests also join in that appreciation.

Comm. Mitchell: Is there anything else that we ought to put into this record at this time?

(No response.)

Comm. Mitchell: There is a hearing set now for Chicago on September 7th, as I remember it.

Mr. Root: Is that in this docket, or in the I. & S. docket?

Comm. Mitchell: That is in both dockets.

Mr. Zearfaus: I think you are wrong, Judge.

Comm. Mitchell: Am I wrong on that?

Mr. McDonald: Just in the I. & S. so far as any official notice that I have.

Mr. Root: I haven't received official notice of the I. & S. hearings in Chicago.

Mr. Zearfaus: Did you file a protest? I think it went out the same time as the notice for this hearing.

Comm. Mitchell: Have you anything further, Mr. Matson?

[fols. 823-824] Mr. Matson: No, sir.

Comm. Mitchell: Well, I guess that is about all we have, gentlemen.

I want to express to you my appreciation for the very courteous manner in which this hearing has been held. It was a long ride out here, but I think we have got some evidence that is material to this case and will help us in the

decision of this case. You people in California are certainly entitled to be heard, and the Interstate Commerce Commission is glad to give you this opportunity to present your side of the story.

The problems of transportation are many. They don't seem to be clearing up very fast, either. To get good transportation, at fair, just and reasonable rates is the one thought that we of the Commission have.

I want to thank you again, gentlemen, and we will adjourn the meeting at this time.

Mr. Root: I would like to offer in evidence Exhibits 45, 46 and 47.

Comm. Mitchell: Is there objection to the offer by Mr. Root of Exhibits 45, 46 and 47?

Mr. Zearfaus: There is no objection.

Comm. Mitchell: They will be admitted.

(Respondents' Exhibits 45, 46 and 47, previously marked for identification, were received in evidence.)

[fol. 825] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 30030

In the Matter of SPECIAL REGULATIONS—EGGS

I&S Docket No. 5792

In the Matter of DAMAGE TOLERANCE ON SHELL EGGS

Room 329, Morrison Hotel, Clark and Madison Street, Chicago, Illinois

Thursday, September 7, 1950.

Met, pursuant to adjournment, at 9:30 a.m.

Before Richard F. Mitchell, Commissioner

APPEARANCES

(As heretofore noted).

ADDITIONAL APPEARANCES:

Paul E. Blanchard and Harold L. Langdon, U. S. Yards, Chicago, Illinois, appearing on behalf of Armour and Company, respondent.

Fred T. Barrett, 221 North LaSalle Street, Chicago, Illinois, appearing for Cudahy Packing Company, respondent.

John R. Wall, 301 B&O Building, Baltimore 1, Maryland, appearing for respondents.

[fols. 826-827] Alfred S. Knowlton, 1 Park Avenue, N. Y., appearing for railroad respondents.

John F. Reilly, 140 Cedar Street, New York 6, New York, appearing for respondents.

Louis R. Simpson, 4100 South Ashland Avenue, Chicago, Illinois, appearing for Wilson and Company, respondent.

Harrison F. Jones, Executive Secretary, and W. M. Touhy, National Poultry, Butter and Egg Association, 110 North Franklin Street, Chicago 6, Illinois.

[fol. 828] PROCEEDINGS

Comm. Mitchell: The hearing will come to order, please, gentlemen.

This is the time and place for the hearing set by the Commission in No. 30030, Sepcial Regulations—Eggs—and also

Investigation and Suspension Docket No. 5792, Damage Tolerance on Shell Eggs.

Are there any parties that desire to enter an appearance at this time?

Mr. Blanchard: I would like to add the appearance of Harold L. Langdon on behalf of Armour and Company in addition to my own, Paul E. Blanchard. I think Mr. Langdon's application to practice before the Commission has been accepted by the Commission.

Mr. Barrett: Fred T. Barrett, Cudahy Packing Company. I am an attorney and am admitted to practice before the Interstate Commerce Commission.

Mr. Winters: My name is Earle Winters. I represent the New York Mercantile Exchange in the egg trade. I would like to enter testimony in their behalf.

Commr. Mitchell: Are you permitted to practice before the Commission?

Mr. Winters: No, I am not.

Commr. Mitchell: Are there any other appearances at this time?

[fol. 829] Mr. Matson: I assume that appearances previously entered in Docket No. 30030 would carry through for this hearing as well and that no additional oral appearances are to be taken in I&S 5792, if they have already been entered in the other docket?

Commr. Mitchell: You mean all that have been entered in 30030 should be considered as being entered in I&S 5792?

Mr. Matson: Yes.

Commr. Mitchell: If there is no objection to that it shall be so ordered.

Well, gentlemen, we are ready to proceed.

I assume the Commission has a right—at least I have been so advised—to consolidate both of these cases and to consider the evidence offered in No. 30030 as also to be considered in I&S 5792.

Mr. Knowlton: The rail carriers have no objection and desire that that be done.

Mr. Blanchard: No objection on the part of Armour and Company.

Mr. Matson: The Secretary of Agriculture has no objection.

Commr. Mitchell: Is there any objection on the part of anyone?

(No response)

Commr. Mitchell: We will proceed, gentlemen, with any testimony that you have to offer.

Mr. Schilt, were you to be cross examined here?

Mr. Schilt: Yes, sir.

[fols. 830-831] Commr. Mitchell: You were to be ready for cross examination here?

Mr. Schilt: Yes, sir.

Mr. Knowlton: We have no questions unless Mr. Zearfaus, who hasn't yet arrived, has some.

Mr. Matson: Mr. Schilt will have another exhibit which brings forward some of the data in his previous exhibit and perhaps you might want to cross examine on that as well as the Los Angeles exhibit at the same time.

Mr. Knowlton: If it is all right, Mr. Commissioner, we will call Mr. Hodkinson.

Commr. Mitchell: Then the railroads will proceed with their testimony.

Mr. Knowlton: We are ready.

Commr. Mitchell: All right.

Mr. Blanchard: I wonder if we might off the record have a little review. I have two witnesses, both very short, who are busy men. There is an assistant to the head of the department. I told them I would give them an hour's notice. One was to simply testify as to which carload shipments of eggs were moved by Armour. The other will simply testify as to which claimed shipments were moved. Practically a half hour will cover both of them. They are both heads of departments or assistant heads and the other heads of the departments are on vacation.

Mr. Knowlton: I imagine he will be through within an hour.

* * * * * * *

[fol. 832] E. A. Hodkinson was thereupon recalled and testified further as follows:

Direct examination.

By Mr. Knowlton:

Q. Mr. Hodkinson, have you made a study to bring the claim situation up to date in so far as possible, to bring the claims up to date, and also to illustrate the effect of the present and in so far as possible the proposed tariff provisions upon the claim picture?

A. That is correct, I have.

Q. Will you proceed in your own way therefore to cover those subjects?

A. At the Brooklyn hearing, Mr. Commissioner, I advised you that the carriers were commencing as of January 1, 1950, a special study to show the effect of the claim payment or potential claim liability as contrasted with the revenue. One of the troubles in making such a comparison is that the claims are not filed currently and as illustrated by that situation, in the month of January, 1950, nine cars as [fol. 833] shown on page 6 of the exhibit I would like to be marked No. 48, the claims had not been received.

(Respondents' Exhibit No. 48, Witness Hodkinson was marked for identification.)

In order to accordingly arrive at an approximation of the potential claim liability as to each of the six months, we have taken the total claims as filed, which claims of course include not only the eggs but also some new packages and labor. We have taken the totals of the claims as filed for each of the six months covered by the exhibit, and divided the total of those claims each month by the number of dozens damaged and have thus arrived at an average claim cost per damaged dozen, and in instances where claims have not yet been filed we have applied that average claim cost per damaged dozen to the number of dozen that were damaged in the car.

I refer to page 6 to illustrate this point. There were thirty dozen eggs damaged in the car that is covered by line 12, and the potential claim liability for those thirty

dozen is $9.66, which is obtained by multiplying the thirty dozen damaged by the average claim cost per damaged dozen of 32.2 cents which is shown at the bottom of the exhibit.

This deals with all cars received in the New York district, and that is the only district in our territory where an inspection is made of every car received. At Boston and Philadelphia the inspections are made principally on request, but at New York our inspection agency does under- [fol. 834] take to examine each car of eggs as it arrives in New York Harbor so for the six months covered by this exhibit we had a grand total of 701 cars as shown on page 1 of the exhibit, 367 of which were damaged cars and only 334 good order cars, so that more than fifty per cent of the receipts at New York arrived in damaged condition.

I have summarized the results and shown averages at the bottom of page 1 of the exhibit. The average claim cost per damaged dozen for the six months was 38.5 cents. The average damage of record per damaged car was 150 cases, 521 dozen eggs, and the average claim, $200.44. The percentage which the potential claim liability represents of freight revenue per damaged car is 48.1 per cent, and the percentage of the cases damaged of cases billed is 36 per cent and the percentage of the dozens damaged of the dozens billed, 4.2 per cent.

Dealing with all cars the percentage which the potential claim liability represents of the total revenue is 27.1 per cent, and the average claim cost per car of the total cars billed, $104.94.

Now, the only tolerance rule that is applicable at the moment is the five per cent rule which only applies on certain grades and descriptions of eggs, and during this six-month period there were only 45 out of 701 cars in connection with which the five per cent rule could be used.

Mr. Knowlton: May that be given an exhibit number?

Commr. Mitchell: It has, No. 48.

[fol. 835] The Witness: The next exhibit is a seven-page document which I will ask to be marked No. 49.

(Respondents' Exhibit No. 49, Witness Hodkinson, was marked for identification.)

The Witness: Mr. Commissioner, you expressed a desire to have some information to show just what the effect of the five per cent rule would be on the claims. So we have taken all the claims filed from August, 1948, to June, 1950, both inclusive, and have shown the difference between the amount as filed, that is, what the claim would be without any tolerance and what the revised amount would be based upon the five per cent tolerance rule, and this exhibit as I said covers the actual claims.

You will note that for January to June, 1950, I have only dealt with twenty-one cars because that is all the claims that we have had where the five per cent rule comes into play. There were forty-five cars received during that period according to my Exhibit 48 where the five per cent rule would come into play, but so far we have only processed twenty-one of those forty-five claims. It leaves twenty-four to be covered. So that as I say, this deals with actual claims.

There were 312 cars covered by the period, August, 1948, to June, 1950, and I started with August, 1948, for the reason that that was the first complete month following the application of this tariff rule providing for the five per cent tolerance. That rule took effect July 24, 1948.

[fol. 836] The summarization is made on page 1 of the exhibit, and I call attention to the fact that the five per cent cars only represent 6.7 cars of the number of cars that were handled during this period, so that while the carriers have some relief under the tolerance rule it only applies to a small percentage of the total traffic.

My next exhibit, which I will ask to be marked No. 50, is designed to show the relief which the carriers would receive under a four per cent tolerance rule and it covers the period——

Commr. Mitchell: The next exhibit will be No. 50.

(Respondents' Exhibit No. 50, Witness Hodkinson, was marked for identification.)

The Witness: That exhibit is marked, "All 4 per cent claim cars at New York City, January 1949 to June, 1950," and it is a six-page exhibit.

In this exhibit we have applied the normal expectancy dozens to the total dozens damaged. We have determined

first the total number of damaged eggs in cases and we have in the next column shown normal expectancy in dozens computed on a four per cent tolerance figure, and then we determined the percentage which the tolerance represents of the total damage, which gives us a potential liability percentage of 65.2 in the first line at page 1.

Commr. Mitchell: Are these figures now only based on New York?

The Witness: They are all based on New York, Mr. Commissioner.

[fol. 837] Commr. Mitchell: You are talking about this four per cent?

The Witness: It is nation-wide.

Commr. Mitchell: Nation-wide?

The Witness: But the only specific figures that we could obtain without going to considerable more expense than we have incurred was at New York. Those records were very completely maintained and we have a force at New York——

Commr. Mitchell: Of course your situation at New York is completely different than any other place in the country that we have found, isn't it, as far as claims are concerned?

The Witness: As far as claims are concerned, yes, sir. It does represent the worst possible picture in the country.

Commr. Mitchell: All right.

The Witness: Although it looks as if Baltimore and Philadelphia are becoming similarly claim minded. There are some indications that the claims are increasing in those two points.

By Mr. McDonald:

Q. Mr. Hoelkinson, just to clarify the picture, is it correct to say that your Exhibit No. 50 is a theoretical application of the suspension tariff, the tariff under suspension in I&S 5792, to shipments which were not properly subject to it prior thereto, just to show how that would have affected those shipments had it been in effect?

A. Well, it isn't a theoretical application, Mr. McDonald. It is applying the four per cent tolerance rule to those actual claims.

[fol. 838] Q. To show how they would have been affected had that provision been in effect at the time they moved?

A. That is correct, and the summaries obtained are shown on page 1 of the exhibit. It shows that the difference between the amount of the claims as filed and the revised amount if the tolerance rule of four per cent had been in effect is $143,336.89, or a reduction of 37.7 per cent.

It also shows that without the tolerance rule of four per cent the average claim amount as filed was $264.42 per car, whereas the revised amount, if we would have had the four per cent tolerance rule, is $164.81, a difference of $99.61 per car.

If you will turn to page 5 of the exhibit it will show how the summarization for the month was obtained. I have listed all January, 1949, receipts and listed each claim, the amount of the claim that is filed, the total damage claims dozens, the total cases damaged and all the other pertinent information, and that figure, the difference Col. 4 minus Col. 11, $8,016.01, is transferred over to the other page. That will be found as the top item, line 1 of page 2.

The next exhibit, No. 51, is headed "All 6% Claim Cars at New York City——"

Commr. Mitchell: Pardon me. You don't have how many good order cars arrived in January, 1949, do you?

The Witness: Not on this exhibit, no, sir.

Commr. Mitchell: Were there some?

[fol. 839] The Witness: Oh, yes; yes, indeed. But of course the four per cent tolerance rule would not have pertained as to those.

Commr. Mitchell: I know but I am just interested in whether you had any cars that came through. These claims are terrifically high, outrageously high. Go ahead.

The Witness: Exhibit No. 51 is similar to Exhibit No. 50, except that in this case the figures are predicated on a six per cent tolerance instead of four per cent. These represent other cars and here again I have shown the summary on page 1 of the exhibit. The application of the six per cent tolerance to the actual claims handled through this period would have resulted in the fifty per cent saving in revenue. The average amount as filed was $124.31.

Commr. Mitchell: This exhibit is No. 51.

(Respondents' Exhibit No. 51, Witness Hodkinson, was marked for indentification.)

The Witness: Had the six per cent tolerance rule been in effect the revised amount of the claim would be $62.12, a difference of $62.19 per car.

Mr. Knowlton: Mr. Commissioner, if you want an answer to your question as to the good order cars in January it is shown on the last pages of Exhibit 48, pages 7, 8 and 9.

The Witness: I am sorry, Mr. Knowlton, you misunderstood the Commissioner's question. He is asking for another year, he is asking for 1949, not 1950.

[fol. 840] Commr. Mitchell: I am asking for the same year as you had.

The Witness: Yes, that was 1949.

Commr. Mitchell: The claims were in 1949.

Mr. Knowlton: I didn't understand.

Commr. Mitchell: All right.

The Witness: Now, our inspection records reveal that we have some mixed cars, some of which would be subjected to a four per cent tolerance rule if that rule was in effect, and some to a six per cent tolerance if the tolerance was in effect, and those mixed cars are covered by my next exhibit, No. 52.

Commr. Mitchell: That will be marked Exhibit No. 52.

(Respondents' Exhibit No. 52, Witness Hodkinson, was marked for indentification.)

The Witness: Here again we have dealt with the actual claims processed by the inspection bureau from January, 1949, to June, 1950, and this exhibit covers all claims handled during that period.

Dealing with the first period, the year of 1949, the average claim amount filed on the four per cent tolerance, was $264.45. The average revised amount if the tolerance had been in effect is $155.20, a difference of $109.25.

For the period January to June, 1950, the average claim amount as filed was $212.10.

Had we had the benefit of the tolerance rule the revised amount would be $140.44, a difference of $71.66 per car. [fol. 841] and dealing with the entire period, January, 1949, to June, 1950, the average claim amount as filed was $256.40.

Had we had the benefit of the tolerance rule that would have been reduced to $152.93, a difference of $103.47 per car.

In column 12 I have shown the difference between the amount of the claim as filed and what the claim would have been based upon the four per cent and six per cent tolerance. We followed that principle throughout the exhibit and in this exhibit we have given fairly complete outlines of the various cars covered. Starting at page 9 of the exhibit we list the 1949 cars and page 10 deals with February, 1949, and so on through, giving specific examples in rather complete detail of the cars that go to make up these figures.

That is all I have, Mr. Knowlton.

Mr. Knowlton: That is all you have? We will offer Exhibits 48 to 52, inclusive.

Commr. Mitchell: Is there objection?

(No response.)

Commr. Mitchell: They will be admitted.

The Witness: I might say for the benefit of any person that did not get a copy of these exhibits that I have plenty in New York, and if you will give me your name and address I will be glad to send them to you.

Mr. Matson: Mr. Commissioner, may your ruling be deferred until we have completed cross examination on these exhibits?

[fol. 842] Commr. Mitchell: We will withhold the ruling until cross examination is completed.

Is that all?

Mr. Knowlton: That is all.

Commr. Mitchell: Cross examine.

Cross-examination.

By Mr. Matson:

Q. Mr. Hodkinson, why is it that you examined only at New York all cars arriving at particular points?

A. I explained that in my direct testimony, Mr. Matson, that New York is the only point at which we undertake to make inspections of all cars received. At Baltimore, Philadelphia, Boston or any other point in eastern territory where the Railroad Perishable Agency maintains an inspec-

tion service, it is only on request. We do not inspect all cars received.

Q. I understand that is what you do. Now I am asking you why that is so.

A. It is a matter of expense as much as anything.

Q. Why don't you save this expense at New York if you can save it at these other points?

A. Well, our claim situation is bad enough as it is in New York when we inspect all cars. God knows what it would be if we didn't maintain the inspection that we are maintaining at the moment.

Q. That is the only explanation you can offer?

A. Yes.

Q. Now, you remarked that this present five per cent rule [fol. 843] only applies on certain grades and inspections of eggs. That is not an accurate statement and I think you will agree that the present rule applies on grade A eggs or any grade of eggs that a packer can pack and the only distinction is whether the eggs have had a truck movement before they go to the rail head, isn't that right?

A. First of all, Mr. Matson, I rather object to your statement that there is anything inaccurate in what I said. I said that the five per cent tolerance rule only applies to a portion of our receipts, and as our records show it is only a small proportion of the receipts.

Q. Well, Mr. Hodkinson, the record will reveal what you said. You referred to grades and descriptions of eggs and that is——.

A. I beg your pardon. I did not.

Commr. Mitchell: Well, let's not argue it. The record shows it. Go ahead, Mr. Matson. I don't quite see the materiality of this cross examination.

Mr. Matson: I wish to avoid any implication that the present tolerance rule relates to grades or descriptions of eggs.

Commr. Mitchell: There can't be any question about what the present tolerance rule applies to. This record clearly shows it and give us credit for being able to read the record and ascertain that. I don't think there is any dispute about that.

Mr. Matson: Yes.

Mr. Matson:

Q. This claim experience reflected in your Exhibit No. 48, [fol. 844] were all of those claims verified by the Perishable Inspection Bureau?

A. Yes, all the claims that were received were verified by the inspection agency, and where claims had not yet been received, as I testified to on my direct testimony, we figured out potential liability based on the average claim cost per dozen computed on the claims actually filed.

Q. There is no question in your mind as to railroad liability on those claims?

A. Yes, I haven't passed upon the liability question. I claimed it is only potential liability. The inspection agency does not pass upon the liability. They simply report to the carriers the result of their inspection. It is up to the carrier's claim department to determine for itself the matter of liability.

Q. These claims were paid, though?

A. I am not so sure that they were. I have no record of their being paid. They have just been processed by the Railroad Perishable Inspection Agency and that is the potential liability which they discovered.

Q. You don't mean to suggest there is any question whether they will be paid, do you?

A. There may be in some instances.

Commr. Mitchell: This witness doesn't know anything about payment of these claims. He stated that frankly. I don't see any sense in pursuing that kind of cross examination.

[fol. 845] Mr. Matson:

Q. Now, will you refer to Exhibit 50, if you please? On page 1 and subsequent pages at the top of column 7 you have a phrase "Normal expectancy dozens." Will you explain what that means?

A. That means that if the four per cent tolerance rule had been in effect that we could have expected that that many dozens would have been damaged and you would deduct that many dozens before accepting liability for what was left of the damaged eggs.

Q. Now, will you take one of the examples given on page 4, 5 or 6, and tell us how that four per cent rule was applied to that particular car?

A. Well, the total damage claim dozens in that car on line 1 was 220. The normal expectancy was 67. 67 is 30.5 per cent of 220, so we figured the potential liability of 69.5 per cent of 220 dozens.

Q. Do you have any of your working papers or underlying figures with you, Mr. Hodkinson?

A. Not here but they are all available. We would be very glad to throw them open for your inspection any time you want to make such check.

Q. I am not questioning your mathematics but I would like to have an example of just how it works. I can't follow you yet on how you use the four per cent.

A. Well, there were 56 damaged cases.

[fol. 846] Q. Where does the four per cent come in?

A. The four per cent would be applied to the total contents of the 56 damaged cases.

Q. In other words, you multiply the number of dozens of eggs in 56 cases?

A. By four per cent.

Q. And then took four per cent of that?

A. Which gives us 67 dozen.

Q. Sixty-seven dozen. Now, does that mean 67 dozen smashed eggs or 67 dozen checked eggs or what does it mean?

A. It means that we have a tolerance of four per cent whether they are smashed, checked or what-have-you. We get a tolerance of 67 dozen out of 56 cases, or a relief of 30.5 per cent in our potential liability. It operates exactly the same as the five per cent rule that we are working under and have been working under.

Q. I don't understand the present rule either, Mr. Hodkinson.

A. Well, I can only give an explanation, Mr. Matson.

Q. You are telling us now that the 67 dozen could be 67 dozen completely smashed eggs or could be 67 dozen checked eggs, is that right?

A. It means that the carriers

Q. Or any combination?

A. Or any combination.

Q. And has no relation to the measure of damage com- [fol. 847] puted by value. In other words, if you take an egg, a sound egg——

Commr. Mitchell: Let's see. All you said was that the four per cent of this number of eggs damaged is the percentage of your relief under this rule, isn't that all it is?

The Witness: That is all I said, yes.

Commr. Mitchell: It has nothing to do with damage at all. That is your relief?

The Witness: That is our relief, that is our tolerance.

Commr. Mitchell: Yes.

Mr. Matson: Mr. Commissioner, I think this rule——

Commr. Mitchell: Go ahead, Mr. Matson. It is very clear to me what he is trying to testify to. But go ahead.

Mr. Matson: Yes. I think the rule is mathematically unsound and it is impossible of application.

Commr. Mitchell: Well, you are cross examining this witness; not what you think about the rule. He has explained what this means. But go ahead. I don't see the purpose of your cross examination. Go ahead.

Mr. Matson: I have no further questions.

Commr. Mitchell: Any further cross examination?

By Mr. Blanchard:

Q. Mr. Hodkinson, on the last three exhibits, I think 50, 51 and 52, there appears a phrase which you have used in your testimony, the phrase, "Normal expectancy." Will you define exactly what you mean by that phrase?

A. Why, it is the tolerance that we expect Mr. Blanchard, [fol. 848] and it is the figures, as I understand it, that have been developed by a study of the Department of Agriculture, and that is that no eggs can be loaded in absolutely perfect condition, and I didn't testify to it but I believe——

Q. You mean it is the normal expectancy that you expect to receive from the Commission or do you mean it is the nomal expectancy of breakage that you may expect to receive in a car?

A. It is the normal expectancy of breakage from which we think the railroad should be saved. In other words, where there is damage claimed in connection with the trans-

portation of a carload of eggs we should take four per cent of the contents of the damage cases and say that as to those that would have happened anyway and the railroads are not liable.

Q. Will you refer to your Exhibit 48, page 1? You received 367 damaged cars and 334 cars in good order, did you not, on that sheet?

A. That is correct.

Q. What was your normal expectancy on the 334 cars that arrived with no damage at all?

A. Well, it would be four or six per cent as the case may be, but if there is no claim there is no necessity to apply the rule.

Q. But are you establishing normal expectancy, only the normal expectancy on a car of eggs, that is damaged, or is it the normal expectancy on all cars of eggs that move by rail?

[fol. 849] A. Well, the only circumstances under which the carrier's revenues would be depleted is when they got a claim for damage, and the only instance where the tolerance rule that is before the Commission for review in this proceeding would enter into the picture is in connection with a damage claim.

Mr. Blanchard: Will you read the question to the witness?

(Question read.)

The Witness: My answer is perhaps too long, Mr. Blanchard, but——

By Mr. Blanchard:

Q. It was beyond my feeble mentality, Mr. Hodkinson. Will you please state it a little slower? Give me a yes or no answer and then explain it as you will.

A. We are only establishing the normal expectancy on claimed cars.

Q. Then the phrase "Normal expectancy," which you use in your later exhibits, 50, 51 and 52, means the normal expectancy of damage if a car is damaged?

A. Well, these were all claimed cars, every——

Commr. Mitchell: Well, just answer the question now.

By Mr. Blanchard:

Q. Will you answer the question?

A. Yes, that is right, only on claimed cars, but I should supplement it by saying that all of the instances shown on Exhibits 50, 51 and 52 are the actual claimed cars.

Q. Well, were the 334 shipments on page 1 of your Exhibit 48, 334 cars, were they actualy shipped cars?

[fol. 850] A. They were actually shipped cars, yes, sir.

Q. But you had no normal expectancy of damage on those cars?

A. We had no claims on those cars.

Q. Then your phrase "Normal expectancy" is the normal expectancy of damage, if there is damage, and it is not the normal expectancy caused by the condition of the eggs at the time they are loaded, is that correct?

Mr. Knowlton: I must object to that. Mr. Blanchard, you claimed you didn't understand Mr. Hodkinson's answer——

Commr. Mitchell: Let's ask him. Let's not argue. I haven't any time for that. What is your objection based upon?

Mr. Knowlton: Mr. Hodkinson answered that in the first response to Mr. Blanchard.

Mr. Blanchard: I so understood but the last answer I got was inconsistent.

Commr. Mitchell: What is that?

Mr. Blanchard: Mr. Knowlton is right. Mr. Hodkinson answered my question. Then pursuant to another question I presumed his answer to be inconsistent. I am trying to find which of the two answers——

Commr. Mitchell: As I understand this record, it is only the normal expectancy on damaged cars?

The Witness: That is correct.

Mr. Blanchard: And it is not a normal expectancy caused by the fact of any theory that all eggs loaded have a certain [fol. 851] amount of breakage in them. That is what I am trying to bring out.

Commr. Mitchell: What do you say to that?

The Witness: I say that all eggs loaded have a certain amount of breakage but there is no necessity for us to bring in any normal expectancy to play if we don't have any claim.

Commr. Mitchell: He has limited that expression, Mr. Blanchard, to just simply damaged cars. I don't know whether that is a very good expression that he uses or not, but his limitation brings it just down to damaged cars.

Mr. Blanchard: We have to brief these exhibits and I think we want to know what the witness means.

Commr. Mitchell: I think that that is clear now.

Mr. Blanchard: I think it is clear.

By Mr. Blanchard:

Q. Now, Mr. Hodkinson, some of your exhibits do reflect the origins of some of the cars, the New York cars, you inspected. Did you make any attempt to determine whether or not your experience on eggs originating in Ohio was different than on eggs originating in Texas, or that those originating on the Pacific coast presented a different picture than those originating in Missouri, or anything of that sort?

A. No, sir.

Q. Not even by territories? You made no attempt to determine whether or not perhaps differences might exist because of loading practices in different areas?

[fol. 852] A. No, I simply took the records as they lay.

Q. Will you illustrate a little bit why it is that the only point at which you maintain an inspection of all cars received is New York, what led you to choose New York as a point rather than Boston or Pittsburgh or Philadelphia or some other one?

A. You mean for this exhibit?

Q. I am referring to your testimony where you answered Mr. Matson that the only point at which you inspected all cars arrived was New York.

A. Yes.

Q. Now, why is that true only at New York rather than only at Philadelphia or only at Boston or only at some other point?

A. That is really a management question. I am not so sure that I am competent to handle it.

Commr. Mitchell: I thought you answered that.

The Witness: I did answer it.

Commr. Mitchell: And you say that is on account of the amount of claims you had in New York.

The Witness: As far as I know we have always maintained a complete inspection agency at New York on eggs. That practice has prevailed over a period of at least twenty-five years, as far as I can find from research, but there is nothing in the record to indicate what led the carriers initially to establish that complete inspection at New York.

By Mr. Blanchard:

Q. Isn't it a fact, Mr. Hodkinson, with which you and I [fol. 853] both are familiar, having been in this game two or three years, that the reason it exists at New York is because in the language of the vernacular New York is the hot spot as far as egg claims are concerned?

A. New York is the hot spot as far as eggs are concerned, I will admit that.

Q. The situation at New York was so bad that you felt you would be justified in maintaining that complete 100 per cent inspection to find out what was going on at New York, did you?

A. I think that is correct.

Q. Have you made any studies similar to those you offered in this entire record from the beginning showing your loss and damage experience on carload egg shipments moving, let us say, from the southwest to CFA territory?

A. No, we haven't covered any points west of Buffalo.

Q. Or from the southwest to the southeast?

A. No, we haven't covered that.

Q. Could I short cut this by saying that unless the destination of the shipment was in Eastern Trunk Line or New England territory you made no study of any shipments destined to any other territory?

A. That is correct.

Commr. Mitchell: This record does show you, however, the claims filed in these various other cities across the country.

Mr. Blanchard: Oh, yes. He made no study——

[fol. 854] Commr. Mitchell: The amounts of them.

Mr. Blanchard: I think some of the shippers have filed some claims.

Commr. Mitchell: Yes.

Mr. Blanchard: I simply wanted to establish there was no railroad study made of that.

Commr. Mitchell: Yes.

Mr. Blanchard: I think that is all I have. Thank you, Mr. Hodkinson.

Commr. Mitchell: Mr. Staley?

Mr. Staley: I have a few questions.

By Mr. Staley.

Q. Referring to page 4 of your Exhibit No. 50, the heading of column 1 reads "Release Date." What does that mean?

A. That is the date the car was released for inspection in New York City, or the New York area.

Q. I call your attention to column 4 headed, "Claim Amount as Filed." Looking down that column the majority of the claims run into the hundreds of dollars. Are you sufficiently familiar wih such matters to state whether claims of that size ordinarily result or could reasonably result from damage which you referred to as normal expectancy without any other egg breakage or damage by rough handling or something of that character?

A. Well, the normal expectancy would be very much less than the amount of the damage that is incurred.

[fol. 855] Q. So that in the case of each of those cars where the damage runs over $100 certainly the eggs have been damaged in the course of transportation, have they not?

A. I can only testify to the figures, Mr. Staley. I don't know anything about the underlying reason for the claim. I simply took off the amount of the claim for the purpose of this exhibit and computed what the difference would be if there had been a per cent tolerance. Obviously any claim over $200.00—there must be some damage.

Q. In applying the four per cent or six per cent tolerance shown throughout your exhibit you have applied that against the labor and the materials in reconditioning the damaged cases as well as against the value of the eggs damaged, have you not?

A. No. What we did was to determine the percentage which the normal expectancy was of the total damage, and

then subdivided the claim, the amount of the claim, by that per cent.

Q. The total damage includes——

A. The total damage includes labor, material and all the rest of it so that using that formula we would reduce the labor and the material by that much.

Q. And likewise the four per cent or the six per cent tolerance was applied by you against the loss from all eggs that were destroyed and made inedible, was it not?

A. The four per cent tolerance was applied against the contents of the total cases damaged.

[fol. 856] Q. You made no effort to apply it only against checked eggs, for example, did you?

A. Oh, no, we took four per cent just as it lay, or six per cent just as it lay.

Mr. Staley: That is all.

Commr. Mitchell: Any further cross examination?

Mr. Zearfaus: I would like to ask a question on redirect.

Commr. Mitchell: All right.

Redirect examination.

By Mr. Zearfaus:

Q. Mr. Hodkinson, will you please refer to you Exhibit No. 48, page 1? You refer there to good order cars. Does that necessarily mean that there was no damage whatsoever in those good order cars?

A. No, sir, it means that no——

Q. What does it mean?

A. It means that no claims were filed against those cars.

Q. Then when you say "damaged cars" in this exhibit and the other exhibits, what does that mean?

A. That means the cars in connection with which claims were filed.

Mr. Zearfaus: I see. That is all.

The Witness: I think I made it plain that the so-called good order cars could contain damaged eggs.

Commr. Mitchell: Is that all?

Mr. Zearfaus: That is all I have. Thank you.

[fol. 857] Commr. Mitchell: Thank you, Mr. Hodkinson.

Mr. Knowlton: What about the ruling on the exhibits?

Commr. Mitchell: The exhibits will be received.

(Respondents' Exhibits Nos. 48, 49, 50, 51 and 52, Witness Hodkinson, were received in evidence.)

Mr. Blanchard: May I ask the witness one more question following Mr. Zearfaus' question?

Commr. Mitchell: Yes.

Recross-examination.

By Mr. Blanchard:

Q. As to the undamaged cars, how many of them did contain damaged eggs?

A. My understanding is that every one of them did.

Commr. Mitchell: What is that now?

The Witness: My understanding is that every one of those cars contained——

Commr. Mitchell: In the undamaged cars?

The Witness: Yes.

Commr. Mitchell: You mean to say, Mr. Witness, there wasn't a car received in New York that didn't have damage in it?

The Witness: Yes, sir.

Commr. Mitchell: Why do you call them good order cars then?

The Witness: We call them good order for the reason that no claims—I was looking around for descriptions—perhaps a better description would be cars on which no claims had been filed. I don't understand that we can get [fol. 858] a single car of eggs from any yard into any destination and move it without its containing some damaged eggs, and the inspection at point of origin conducted by the Department of Agriculture——

Commr. Mitchell: Well, you don't say that, Mr. Witness, as to outside of New York?

The Witness: Yes, sir.

Commr. Mitchell: Why, this record shows there is little damage all over the nation.

The Witness: Few claims, Mr. Commissioner.

Commr. Mitchell: That all the claims are in New York.

and to do something which we haven't unfortunately entirely developed, nor have the railroads developed.

The Witness: There is perhaps a distinction, Mr. Commissioner, between a damage and claims. I think that there is damage in the cars received at other destinations in connection with which no claims are filed.

Commr. Mitchell: You mean that people in other parts of the country don't file claims although the railroads should be liable for the claims?

The Witness: They don't file them to the extent that the New York receivers file them.

Commr. Mitchell: That doesn't answer my question. You don't want to testify that people in the other parts of the nation don't file claims against railroads although they have a legitimate claim, do you?

[fol. 859] The Witness: I don't know that they have a legitimate claim, but I can only go by the facts. We are not getting claims.

Commr. Mitchell: But you are damaging the eggs in other parts of the country in the same way that you are into New York, is that what you are testifying to?

The Witness: No, I am not testifying to that, Mr. Commissioner.

Commr. Mitchell: All right.

By Mr. Blanchard:

Q. Then, Mr. Hodkinson, what your Exhibit 48 means was that during the period of this study there was something around one thousand cars of eggs that were damaged but the consignees were just too stupid to file claims with the railroad, is that right?

A. Which exhibit is that?

Q. Exhibit No. 48.

A. Exhibit 48 covers three hundred cars in connection with which no claims were filed.

Commr. Mitchell: Don't you think charitable would be a better word than stupid?

Mr. Blanchard: No, I think stupid is right.

By Mr. Blanchard:

Q. What was your answer to the question, Mr. Hodkinson?

A. I beg your pardon?

Q. What was your answer to the question? I have lost it.

[fol. 860] (Question read.)

By Mr. Blanchard:

Q. I mean in the question to be too stupid or too considerate.

A. There was no thousand cars. The total was 701 and there were 334 of those cars in connection with which no claims were filed.

Q. Then the question should read 334 cars.

Mr. McDonald: Mr. Hodkinson——

Mr. Blanchard: I haven't gotten an answer to my question.

Mr. McDonald: I am sorry.

The Witness: We haven't got a record of any claims on any of those 334 cars.

Mr. Blanchard: That is all.

Redirect examination.

By Mr. McDonald:

Q. Mr. Hodkinson, isn't it a fact that with regard to those 334 cars which you have shown under the general heading of good order cars are cars which were delivered and accepted by the receivers as being in apparent good order and on which no claims were subsequently filed?

A. That is what I have stated, Mr. McDonald.

Mr. McDonald: I don't think it was clear.

Commr. Mitchell: I don't think that is what he testified to.

Mr. McDonald: That is what I am asking.

Commr. Mitchell: He testified that on every car that came into New York there were damaged cars, on every car that came into New York, under this exibit. That is what he

[fol. 861] testified to. It doesn't make any difference whether they were good-order cars or what kind of cars.

By Mr. McDonald:

Q. Do you know whether or not these 334 cars were accepted by New York receivers as being in apparently good order?

A. Yes, they are accepted in apparent good order, and as I say our records do not indicate that we certified claims in connection with any one of them.

Mr. McDonald: That is all.

Commr. Mitchell: But your testimony is that in your judgment there was damage in every single one of those cars, isn't that a fact?

The Witness: Yes, that is a fact.

Commr. Mitchell: All right, that is all.

The Witness: We can't escape that.

Mr. Zearfaus: That is why we have this nation-wide tolerance rule in the suspended tariff.

Commr. Mitchell: That isn't the record in this case as to other cities. That is the difficulty. All right, let's go ahead.

(Witness excused.)

Commr. Mitchell: I think the railroads ought to be discovering what is going on in New York. God knows, we have been trying to get them to do it.

You have been sworn, Mr. Jensen, haven't you?

[fol. 862] Mr. Jensen: Yes.

WALTER S. JENSEN was thereupon recalled and testified further as follows:

Direct examination:

Commr. Mitchell: Would you give your name to the reporter, Mr. Jensen?

The Witness: My name is Walter S. Jensen, manager of the Railroad Perishable Inspection Agency, New York City.

Mr. Knowlton: Mr. Jensen has a single exhibit which

I would like to identify as Exhibit No. 53. It has been passed around together with his statement.

The Witness: It hasn't been passed around yet.

Mr. Blanchard: I object to the first sentence of the statement. It is an obvious unsupported conclusion of the witness.

Commr. Mitchell: He hasn't made it yet, has he?

Mr. Blanchard: I am trying to keep him from making it.

By Mr. Knowlton:

Q. Will you proceed with your statement, Mr. Jensen?

A. The percentage of damage in relation to quantity shipped has not materially changed during comparable periods since January 1st, 1947, when the Railroad Perishable Inspection Agency started the comprehensive analysis of damage in cars unloaded at New York. The damage of record in cars inspected at New York since January 1, 1947, approximates eleven per cent of the contents of cases segre-[fol. 863] gated by the consignee because of damage.

At this time I would like to offer as an exhibit this record of damage for the years 1947, 1948, 1949 and the first six months of 1950. This is a single sheet—damage of record in cars of shell eggs inspected at New York. May we have it identified as Exhibit No. 53?

Commr. Mitchell: Exhibit No. 53.

(Respondents' Exhibit No. 53, Witness Jensen, was marked for identification.)

The Witness: In this exhibit you will note that the percentage of bad order cases and the percentage of dozens damaged in the bad order cases holds a rather consistent trend as far as percentage is concerned.

The number of cars moving by rail to New York has declined sharply. Those eggs which have moved by rail were packed in the same containers with the same size and style of fillers and flats and were loaded in the cars in the same manner for each of the periods referred to above. The number of cases containing damaged eggs at destination and the related number of dozens damaged has followed fairly closely the decline in quantities shipped by rail.

Railroad inspection activities at rail points of origin and United States Department of Agriculture research have demonstrated that shell damage at the time the eggs are loaded in the car exists to some extent in all shipments. [fol. 864] The general average of this shell damage for eggs packed at rail points of origin is approximately three per cent, which for all practical purposes, is a reliable index of normal damage in that kind of eggs.

Further research shows that an additional one per cent of shell damage is a normal result at destination associated with ordinary handling of the car in rail transportation and is chargeable to the fragile nature of shell eggs as now packed.

Containers. Present day eggs shipped by rail are larger than the general run of eggs produced fifteen or twenty years ago, yet the cell of the standard filler used today is exactly the same width as it was when small eggs were shipped.

Our inspections at destination markets show that most of the damage found is to the side of the egg and to those eggs in the first row of cells of the filler against one end of the case and the corresponding side of the center board of the case.

The fact that approximately four out of every five cases containing damaged eggs show no external evidence of the presence of such damage is still further proof that the eggs are too large for the cells in which they are packed. The internal packing devices of the case do not afford sufficient cushioning to protect the eggs from damage.

Under date of August 1, 1950, I received, as a member of the Egg Packaging Task Group of the Poultry Industry Ad- [fol. 865] visory Committee, from Mr. Melvin W. Buster of the Poultry Branch of the United States Department of Agriculture, a fact sheet on the changes in cases, flats and fillers for eggs.

I now offer as an exhibit this fact sheet and letter of transmittal.

Commr. Mitchell: That will be marked Exhibit No. 54.

(Respondents' Exhibit No. 54, Witness Jensen, was marked for identification.)

The Witness: This fact sheet reads in part as follows: "Now that the industry has decided that larger egg cases and packaging materials are needed and has cooperated with the United States Department of Agriculture in setting up new size standards, the problem of changing over from the old to the new arises. The major reason for this change is to reduce losses in eggs through shipping. Tests conducted repeatedly by the Poultry Branch, Production and Marketing Administration, United States Department of Agriculture, and by the industry itself, have indicated that standard egg cases and inner packing materials now in general use are among the causes contributing to such losses for the reason that eggs today don't fit because they average slightly larger than they did a few years ago."

The Department recommends that users of egg cases change over as rapidly as possible to the new size case, the new size filler and new style flat. I understand that the manufacture of the new filler and new flat necessitates some changes in machinery that may take several months to accomplish. Therefore, the anticipated improvement in the [fol. 866] damage situation expected from the use of the larger size fillers may not develop in the ordinary course of business until the 1951 packing season.

The Department's conclusions are stated in the last paragraph of the fact sheet reading as follows: "Comparison of these measurements with measurements taken in 1946 shows definitely that eggs have 'grown.' In 1917, about 2¼ inches of height was allowed to fillers and flats to accommodate the length of the average egg. Today fillers and flats must allow at least 2-7/16 inches of height to accommodate the bulk of the eggs packed. Also cells of the fillers must be larger to make room for the growing waistline of the 1950 egg as compared with that of the 1917 egg."

I would like at this time to demonstrate what I have in mind with the present size standard filler and the new filler.

These particular eggs (indicating) are packed in the standard egg filler and for demonstration purposes only we show the effect.

By Mr. Knowlton:

Q. Mr. Jensen, will you try to do this for the record as far as possible?

A. This in my opinion demonstrates definitely that the eggs are too tight in the present size filler. It can also be demonstrated rather easily by communicating a shock that goes right straight through with the last egg and there is where our damage is found, against the end of the case, [fol. 867] and against the center board at this particular location. (Indicating).

Now here is the old style filler and here is the new one. The difference is that each cell is 1/32nd of an inch larger in both directions and 3/32nds of an inch have been taken off the tips of the filler. You will see the difference between the length of the tips on this new one.

Q. For the record, which is larger?

A. The outside dimensions are the same but the cells are larger in the new style filler, each one a 32nd of an inch.

It may be that another added advantage of the new one with the shorter tip may show up in that it is stiffer than this one. This one folds over more readily than the short one does, but that remains to be seen by actual experiments.

When I pack these eggs in the new style filler, the new size filler——.

Q. Mr. Jensen, will you state what happened when you picked up without bending the old filler with the eggs in it?

A. I didn't count, but I think that would be wise. I didn't put any strain—I didn't crimp them like they usually do but I picked up all but two eggs.

Q. In other words, all but two eggs stuck in the old style filler which indicates how the present eggs are too tight in the old style filler, is that correct?

A. That is right. That is what I am trying to demonstrate.

Q. And in addition to being too tight you have illustrated [fol. 868] tapping on one side and transmitting the shock through the six eggs to your finger on the other side, is that correct?

A. That is correct. Now, doing it the same way, lifting it up straight——

By Mr. McDonald:

Q. Mr. Jensen, could I interrupt you just a second? Have you performed that same experiment yourself with actual eggs instead of these?

A. Yes, I have.

Q. What would the result be in that case?

A. Not so many stayed in the filler because of the weight of the egg. I am not talking about the weight of the egg at all, but a good part of them did stay there, but I am trying to prove not that these are the same as natural eggs, but their dimension is so tight that the impacts are communicated to the last row of eggs.

By Mr. Knowlton:

Q. Where have you the eggs now, so the record may show? You have placed them in the new type?

A. These are in the new size filler.

Q. Which is slightly larger?

A. One-thirty-seconds of an inch larger in each cell in both directions.

Q. Will you tell us what happens when you lift up the new type of filler?

A. I am not putting any strain on the filler at all to hold the egg and am lifting it up straight. Thirty-three eggs [fol. 869] came out, only three remained in the filler.

Mr. Staley: Mr. Jensen, what weight eggs do those represent?

The Witness: Do what?

Mr. Staley: What weight eggs do those represent? That is, eggs are different sizes. Just what size or weight of eggs do these represent?

The Witness: They would be in the class of extra fancy heavy weights I think.

Mr. Staley: Approximately what weight per dozen?

The Witness: I couldn't answer that question, you would have to get an egg expert on that, but that isn't my point. My point is dimensions, the diameter of the egg, not the weight of the egg.

Commr. Mitchell: Do I understand you, Mr. Jensen, to testify that if they had these larger fillers that would cut the claims very materially?

The Witness: Yes.

Commr. Mitchell: Why haven't the railroads required the use of these larger——

The Witness: That is set forth in the research work done by the Department of Agriculture which brought this into production. My understanding is the first of these new style fillers that went into manufacture was out in Iowa about the middle of April, 1950. There is quite a change-over in the machinery required.

[fol. 870] Commr. Mitchell: How much do you think this would reduce the amount of claims filed, if we used these larger fillers?

The Witness: We have only one test to go by, and that is a test that is on record in my previous testimony, that the damage was materially less, and that was only part of a carload, made under the very close research work of the USDA in the fall of 1949.

Commr. Mitchell: You couldn't give us any figure? "Materially" is quite an indefinite word. You couldn't give us any percentage figures?

The Witness: Well, if that one test is worth while it is in the record, and I quoted the findings, and as I recall—I have got that somewhere here, but it is fifty per cent easily.

Commr. Mitchell: What I am getting at, Mr. Jensen, is that if you can reduce the claims that way we don't need this larger tolerance rule that you are now asking for, do we?

The Witness: Maybe not. Maybe the eggs will be changed in packing in an entirely different way, and it would change the whole picture. I maintain myself for a good many years that the internal packing of the present day egg case is largely responsible for our damage.

Commr. Mitchell: But you don't have the damage at other places in the same percentage as you have in New York, do you?

The Witness: We have damage in all cars of eggs.

Commr. Mitchell: You don't have the claims then—let's [fol. 871] put it that way—at other cities as you do have in New York?

The Witness: The claim story is reflected largely by the degree of tolerance of the consignee.

Commr. Mitchell: Let's answer the question.

You are familiar, are you, with the amount of claims filed at the various cities throughout the country?

The Witness: Yes, sir.

Commr. Mitchell: What do you say now for the record as to whether or not at New York the percentage isn't materially higher?

The Witness: On damage itself?

Commr. Mitchell: Claims filed. I don't care.

The Witness: On claims filed, yes.

Commr. Mitchell: You have no place in the nation where you have a 27, 1 or 2, whatever it is, percentage of revenue received that you are paying out in claims like you do in New York?

The Witness: That is correct.

Commr. Mitchell: So we get down, don't we, to a question of what we shall do as to New York rather than shall we penalize the whole nation?

The Witness: I think the normal expectancy rule will not penalize the whole nation to the extent that is implied because some receivers are already accepting a degree of damage in cities in our territory and accepting the cars as good order.

By Mr. Knowlton:

Q. Mr. Jensen, do you have any further demonstration to [fol. 872] make at this time?

A. Not just now. A little later on I have another one.

Q. Will you proceed with your statement?

A. Carloading. In 1947, following action taken by the Eastern Railroads, a National Egg Damage Committee, of which I am chairman, was formed for the purpose of activating railroad research of egg damage and to coordinate the activities of the originating and delivering railroads in that enterprise. This Egg Damage Committee has kept in close touch with the various types of experimental loading that have been tried out since 1947 in an effort to develop a practical method of preventing damage.

Every known method of loading carload shell eggs packed in fibre and wooden cases has been tried out, including lengthwise loading vs. crosswise loading; the paper tie-down method; use of an adhesive to glue the cases into a unitized

load; and the use of metal strapping to unitize the load, particularly the top layer of cases.

These, combined with impact register findings, produced some improvement in the destination outturn, but not enough to justify general adoption of any one method. The internal packing of the eggs in the case was more important.

The latest experiment in loading or what can be more accurately described as packing the cases in the car, is the use of cushions at both ends of the load between the first [fol. 873] stack of cases and the bunker walls to absorb the shocks of transportation at the points where damage is most commonly found in the car at destination.

In the first stages of this project sponge rubber blankets were used, but the cost of these blankets and the difficulty of having them returned for reuse made them impractical.

We then arranged to secure on an experimental basis, a supply of sealpad excelsior cushions of a size to cover the bunker wall to the height of a five-layer load. Enough of these cushions were attached in layers at the top to each bunker wall—hanging like a curtain—to take up the excessive lengthwise slack in the load. The results have been encouraging but the number of cars in which excelsior cushion-pads were used has been relatively few and to the present time involve only eggs moving from Utah by rail to eastern destination markets.

Comparison of Destination Outturn of Utah Eggs
Inspected at New York—1950

Cars Loaded With Excelsior Pads Fastened to Both Bunker Walls

	Delivered Good Order	Delivered Bad Order	Total Damage	Average for all 8 cars
8 cars	4	4	1184½ doz.	148 dozen

Cars Loaded in Usual Manner, Without Cushioning on Bunker Walls

35 cars	3	32	20083 doz.	514 dozen.

The good results obtained from the use of these cushions further demonstrates that the egg case packed with eggs

is in itself not sufficient to protect its contents but must be [fol. 874] protectively packed in the car, not merely loaded in the ordinary way. Cushioning, therefore, serves as a protection for the load as a whole when it is placed at both ends of the car. Even under this improved method of packing a car, damage occurs which further demonstrates that the internal packing devices of the egg case constitute an original cause of damage.

The 1950 experiments with the expandable excelsior seal pads are still in progress. Pads 48 inches wide by 68 inches high to extend to the top of the five layer load of standard egg cases are being used. The amount of lengthwise space in the load is determined with a trial row of cases placed in position before loading of the car is actually started. Slack at the end of that row shows the amount of space that is to be taken up by the cushions. Half of that amount of space is the thickness of cushions needed at each end of the car. These cushions are now available at a cost of approximately 28 cents f. o. b. factory.

Loading Rules. Present loading rules in the classification need some strengthening to incorporate the changes which research indicates are helpful in the reduction of transportation damage. The importance of tight loading lengthwise in the car is of course set forth in the tariff but the means of accomplishing this result should be specifically spelled out and should include the end cushioning idea described above.

We have found at destinations that lengthwise slack in the [fol. 875] load is a direct cause of damage. In a project under the Research and Marketing Act of 1946 we cooperated with the Department of Agriculture in a study of damage in relation to the various factors of loading and types of containers. The report of this study was issued in June, 1950, by the Production and Marketing Administration of the USDA under the title of "Reduction of Loss and Damage in Rail Transportation of Shell Eggs by Improved Loading and Bracing."

One of the items of the study was relation of lengthwise slack to damage. On page 8 of this report in an analysis of 1145 cars of shell eggs it is stated that 43.5 per cent of the cars which were loaded without excessive slack were unloaded with damage of record, that is, load order cars. The

corresponding figures for cars loaded with more than two inches of excessive lengthwise slack is 83.2 per cent of the cars were delivered with damage of record.

Q. Have you copies of this to make it Exhibit No. 55? I believe it has been passed around.

A. I have a few.

Mr. Knowlton: Exhibit No. 22 is a pamphlet entitled "Reduction of loss and damage in rail transportation of shell eggs by improved loading and bracing."

Mr. McDonald: Mr. Jensen, it was page 8 of this document that you were referring to in your prepared statement?

Commr. Mitchell: Page 8 of Exhibit 55. It will be marked [fol. 876] as Exhibit No. 55.

(Respondents' Exhibit No. 55, Witness Jensen, was marked for identification.)

The Witness: At page 8 there is a tabulation there.

Commr. Mitchell: All right.

The Witness: On the basis of our research to date, it is apparent that at least two things should be required of packers and shippers of carload shell eggs: First, use of the larger fillers and new style flats and, second, use of excelsior cushions at both ends of the car in sufficient quantity to take up the lengthwise slack in the load.

By Mr. Knowlton:

Q. Now, Mr. Jensen, just one thing at that point. These things that you have suggested would not affect the actual condition of the eggs as they are tendered at origin, would they?

A. It has nothing to do with that, no.

Q. Proceed.

A. Normal expectancy. However, the greatest element in the situation facing the railroads and one which we reckmust be adopted is the recognition of normal expectancy of damage in the New York Claim Market. The other changes and suggestions in respect to tight and cushioned packing of the cases of eggs in the car, and more efficient internal packing of the eggs in the case will go far to offset the ordinary hazards of high speed rail transportation but they cannot

[fol. 877] offset the present tariff liability which as a practical matter forces the railroads at destination to recognize and pay for eggs that are not only fragile but actually unsound when tendered to the carrier in a sealed container.

Now I would like to add another demonstration if I might in connection with a method of internal packing of eggs which is used almost exclusively in Canada with a very small amount of damage as compared with the United States eggs. I refer to the device which is called the egg tray.

This egg tray as you see contains thirty eggs per layer. These are not true eggs either. The egg is offset vertically. It is protected in that it is packed inside between four posts, it is protected against the shocks of transportation in that way. We had fifteen cars of Canadian eggs unloaded at Buffalo in February, 1950, for storage. Thirteen of them were delivered in good order. Two of them were delivered in bad order, that is, damage was verified. The damage in these two cars added up to seventy-one cases containing damaged eggs, twenty-eight dozen broken, one and a half dozen leakers, and nineteen dozen cracked eggs, and the labor required to recondition amounted to $26.25.

I don't know whether we have actually seen the claims on these cars or not, but there we have got a remarkable result. I understand that the claim total in Canada is to a point where we would be delighted if we had such an experience.

[fol. 878] I wired Mr. Allen of the Canadian National to send me the 1949 figures on Canadian National eggs handled, and his reply received this morning is as follows:

"1659 cars of eggs originated in 1949; total claims, $20,202.28; average per car, $12.17, or three-quarters of a case per car. This represents Canadian cars only; does not include bridge traffic from U. S. points."

Commr. Mitchell: How many cars was that?

The Witness: 1659 cars.

Commr. Mitchell: Haven't we in this record, Mr. Jensen, testimony of one shipper of was it 6000 cars where their claim loss was even less than that? Do you remember that?

The Witness: Canadian?

Commr. Mitchell: No, an American shipper on American railroads that didn't go into New York. Mr. Ford of Swift testified as to his claims. Don't you remember that?

The Witness: Six thousand cars without any claims?

Commr. Mitchell: Oh, I didn't say without any claims but it was a less figure than $20.00——

The Witness: $12.00 here.

Commr. Mitchell: It was a less figure than that.

The Witness: I don't recall any such good figure as that.

Commr. Mitchell: You don't recall it? Well, I may have the record wrong.

Mr. Ford: Mr. Commissioner, I might clarify that.

[fol. 879] Commr. Mitchell: Yes, please.

Mr. Ford: The figure that I offered as to cars shipped was correctly stated by you. The claims filed applied only to straight carloads of eggs, none of which had any butter or poultry or anything of that kind. Those claims applied to all cars containing eggs made a very low figure, but those claims applied to the straight carloads of eggs only brought us an average of about $26.00 as I recall it from my exhibit per car, but it must be remembered that the claims applied to all cars but as I figured it in the exhibit I applied it only to the straight cars of eggs, which made the figure higher than it would be. Your figure is correct, it would be lower.

Commr. Mitchell: You had forgotten that testimony, Mr. Jensen, or did you hear it?

The Witness: I had forgotten the details on it, yes.

Commr. Mitchell: Your difficulty, Mr. Jensen, and you are familiar with the situation over the country, is in New York City, isn't it?

The Witness: Not entirely.

Commr. Mitchell: Name another city where you have a large percentage of claims filed?

The Witness: Baltimore.

Commr. Mitchell: What is the percentage as against revenues received for the hauling of eggs?

The Witness: I don't know the latest figure but I believe [fol. 880] it is in Mr. Hodkinson's testimony for 1947.

Commr. Mitchell: Do you have any idea what it runs at all?

Well, Mr. Hodkinson, what was the record?

Mr. Hodkinson: 15.8 per cent.

Commr. Mitchell: It was 15.8 per cent, Mr. Jensen, at Baltimore. That is 12 per cent lower than New York.

You remember that, Mr. Jensen, when the railroads paid over half of the total revenue received in egg claims? You remember that?

The Witness: Yes.

Commr. Mitchell: And the figures here show that in that year New York was approximately 38 percentage points more than Baltimore was, so you wouldn't say that Baltimore was a fair comparison, would you?

The Witness: I am talking of the present day conditions. Baltimore has depreciated.

Commr. Mitchell: Well, have you the figures on Baltimore at the present time?

Mr. Hodkinson: No.

The Witness: No.

Commr. Mitchell: Well, how do you know, Mr. Jensen? You can't give us the figures.

The Witness: I can get them. I am talking about damage now. Damage that is recognized——

Commr. Mitchell: I am talking about percentage of reve-
[fol. 881] nue received for hauling eggs.

The Witness: I don't know that figure. I would have to pull the records on individual cars.

Mr. Hodkinson: We could obtain it.

Commr. Mitchell: You are familiar, aren't you, you will have to admit that we have made progress in helping the railroads out on this egg claim business, haven't we?

The Witness: That would be a hard——

Commr. Mitchell: We have cut the number of cars you have hauled and every car we cut makes you money, doesn't it?

The Witness: Yes, sir, that is right.

Commr. Mitchell: Yes, and into New York.

The Witness: To New York, very sharply in New York.

Commr. Mitchell: Well, that is a fine thing for the railroads, isn't it?

The Witness: No.

Commr. Mitchell: Isn't it a fact that the railroads are not capable of handling eggs into New York?

The Witness: No, sir, it is not. We can under proper loading and packing.

Commr. Mitchell: Well, we have been going on this in-

vestigation now for over three years and you have made no progress to speak of except to lose the business, isn't that right?

The Witness: No, I wouldn't say that is right. We have made some progress. It doesn't show up in the net figures [fol. 882] perhaps. The percentage of damage in cars shipped remains pretty much the same, but we have been able to deliver some eggs long haul in good order. These Utah eggs demonstrate something.

Commr. Mitchell: Well, we know this record also shows Utah ships west to California with very little claims. They are shipping quite a large volume. We have that in the record.

The Witness: That is right. Most of their eggs go west.

Commr. Mitchell: Yes, and they have no claims, nor do the railroads have claims out there. What we are confronted with in this case is, you want this tolerance to apply all over the nation. Well, before the Commission puts it in there ought to be a necessity for it all over the nation. As to New York it is a different story.

The Witness: Well, if it were possible to apply it to New York only I would be in favor of that.

Commr. Mitchell: Well, that is all right. That is what I wanted to know. All right.

By Mr. Knowlton:

Q. Have you finished, Mr. Jensen?

A. I don't know whether this demonstration has gotten into the record completely.

Q. No.

A. As far as a description of what this device is. It is known as the egg tray. It is sometimes miscalled a filler flat, but the filler flat combination is the standard American device. This is an egg tray and I would like to have that [fol. 883] clearly understood. It protects the egg. It has some disadvantages, it has a lot of advantages. I think it ought to be tried out and used more generally.

Q. Now, Mr. Jensen, will you describe that into the record as clearly as you can, how it is construeted, what it is that you are talking about when you say "this?"

A. This is a one piece molded device to take the place

By Mr. Knowlton:

Q. Now, Mr. Jensen, has that——

Commr. Mitchell: Where do we get into this tray business in this case that we have got before us now?

Mr. Knowlton: That is one of the things that has come about. As Mr. Jensen testified, these reports only came out the first of August.

Commr. Mitchell: I am asking where this tray business is material to the investigation. It isn't material to your tariff. It has nothing to do with it, has it, this I&S case?

Mr. McDonald: According to Mr. Jensen, Mr. Commissioner, if I may answer for him, he is testifying that in his expert opinion to require shippers and receivers of eggs to use that type of egg case tray in place of the type of filler and flat that is presently used would very materially reduce claims under the same conditions.

Commr. Mitchell: I understand that. But are you asking that that be required? Are the railroads asking that?

Mr. McDonald: They haven't as yet, that is a sure thing, [fol. 887] except——

Commr. Mitchell: You are asking for a flat tolerance. Now, Mr. Jensen is testifying that if you used these better fillers, the larger fillers, and this new type, that it would cut the claims.

Mr. McDonald: That is true, that is true with respect to the suspension proceeding, but in so far as the general investigation is concerned it would seem to me that that is entirely pertinent as a possible explanation for damage and what might happen if that was a requirement in the future.

Commr. Mitchell: Well, possibly it is. We will go ahead.

The Witness: This is in the tariff, too, by the way.

Commr. Mitchell: It is in the tariff?

The Witness: It is in the classification.

Mr. Knowlton: It is an improved package.

The Witness: The egg tray.

Mr. Knowlton: Yes.

Commr. Mitchell: All right. Go ahead.

By Mr. Knowlton:

Q. Now, Mr. Jensen, have you anything further to indicate that this might be a more satisfactory package?

A. Well, there is pretty good evidence that this device is coming into use, is in use by certain packers and re-packers of eggs for household size packages, and I have some examples here of this same device——

Q. You mean in the United States?

[fol. 888] A. In the United States. I have here a sort of a triple arrangement made in the same manner. The eggs are placed here—(indicating)—and closed——

Q. Just a minute. You are in the record here.

A. One dozen eggs are placed in this container, one to each cell, and it is closed by folding over the same type of device and finally closed and sealed along this edge, perhaps with a clip and sometimes with glue.

Q. Now, the container you are talking about now is a household container, to be bought in the store and taken home with a dozen eggs in it?

A. This is a device that is used for consumer trade from the grocery store to home, a short distance, relatively. The eggs are packed far more carefully in this container for that short distance than they are in an egg case for rail transportation of two thousand miles. This is manufactured by the same outfit that makes the egg tray, and apparently it has been adopted by a good many packers.

By Mr. McDonald:

Q. What are the two that you have there, Mr. Jensen?

A. One is Swift's Brookfield Brand, Wilson's Clearbrook, and here is Land O'Lakes, Country Squire, Dixon, Illinois, and here is Cudahy's Sunlight eggs, Bowman Dairy Company Warranted Fresh, right here in Chicago. That other one is a blank, I think.

[fol. 889] Q. Those are all containers that are presently used by the firms you have named for the——

A. Consumer's size package.

Q. (Continuing:) —packing of retailed eggs?

A. The manufacturer told us or the representative in New York told us the day before yesterday, that these are not packed for samples, printed for samples, they are printed on order from these packers and are used.

Q. Does that complete your statement?

of the two pieces known as a filler and flat. It is so constructed that it has posts, that the egg is packed between four posts, and fits itself into that cavity in such a way that it is protected against the immediate shocks such as come from straight row packing of the standard filler and flat.

Q. And these little pyramid structures made out of pressed pulp or paper automatically adjust the pressure on the egg by the egg sinking in on the four pyramids? Do they?

A. That is right.

Q. And that pressed paper or structural pulp acts both as a top and a bottom?

A. That is right, yes.

Q. And it is so constructed that it uses to advantage more of the entire space in the crate in the sense that the spaces between the eggs are wider than in the ordinary container?

A. I think so. That is the way it actually works out in practice. It requires six layers instead of five because of the vertical offset in the pack. The eggs are not one on top [fol. 884] of the other.

Q. That is one of the points I wanted to bring out. The eggs are not one on top of the other and they are not tight against each other so that you can transmit a shock from one side to the other?

A. That is correct.

Q. The cases would contain the same number of eggs, would they?

A. Exactly, yes.

Q. And this extra separation of the eggs is obtained by the placing of the eggs not one above the other but in the space between?

A. The vertical offset as we call it in inspection language.

Q. Have you any further remarks to make on this?

A. Eggs are packed in such a way that they are six wide in one layer, by five, and then in the next layer they are five by six. That is how they obtain the offset vertically.

Q. I don't know that the record stated, but of what material are they made?

A. These are made out of spruce, pulp wood.

Q. And they also make them out of——

A. They can also make them out of newspaper. They would be gray like this. (Indicating).

Q. Like the ordinary ones?

A. The ordinary filler and flat.

Q. Do you care to give an opinion further than the figures [fol. 885] that you have given?

A. On the basis of what little I know about their use, actual use, our experience at Buffalo, for instance, and my general information on the results in Canada, and the fact that they are exclusively used in Europe, I would say this is superior to the filler and flat combination.

Q. Superior to the new type even?

A. Yes. Of course we haven't had much test with the new type yet but——

Q. Would part of that be based upon just the application of general engineering principles, the soundness of the structure of the little pyramid?

A. That is right, and our general experience with packing, internal packing of anything.

Mr. Knowlton: That is all I have.

Mr. McDonald: Just two questions to be sure the record is clear on that point.

By Mr. McDonald:

Q. Mr. Jensen, you referred to fifteen cars, I think it was, the number of cars that were received in Buffalo from Canada?

A. That is right.

Q. I am not sure that you made the statement, but were those shipments packed with this tray type of filler that you just demonstrated?

A. I didn't say that but they were, they were packed in [fol. 886] the egg tray.

Q. Do you know whether or not that particular device is in common use in Canada or not?

A. It is in very common use, almost exclusively.

Mr. McDonald: That is all.

Commr. Mitchell: Is that all?

Mr. Knowlton: That is all on that one.

Commr. Mitchell: Do you ever go to the store and buy eggs?

The Witness: Yes.

Commr. Mitchell: Couldn't you testify then that you get them in these kinds of packages, of your own knowledge?

The Witness: Yes, I think so. I have seen them in the kitchen at home.

Commr. Mitchell: I asked you if you bought the groceries. If you did like some of them do you would know it is in use.

The Witness: I pay for them I know.

Commr. Mitchell: That has nothing to do with it.

By Mr. McDonald:

Q. Did you ever see any in any retail stores?
A. Yes, I have.

Commr. Mitchell: All right. Is that all?
Mr. Knowlton: That is all.
Commr. Mitchell: Is that all, Mr. Jensen?
You may cross-examine.

[fol. 890] Cross-examination.

By Mr. Matson:

Q. Mr. Jensen, you have conducted some tests here. I wonder if you would conduct another test by taking those china eggs and placing them in the flat which you have before you?

Mr. Knowlton: To do what?

Mr. Matson: To take the china eggs and put them in this flat.

The Witness: You don't like these plaster of Paris eggs?

By Mr. Matson:

Q. Let's put the china eggs in that tray and see what they look like.

A. In the tray?

Q. Yes.

A. All right. (Indicating)

Q. You have placed the china eggs in the bottom egg

tray and now you are to put them—the top egg tray over that?

A. Yes.

Q. Now I believe it is true that there is about a half inch space between the posts of the top tray and the top of the posts of the bottom tray, is that correct?

A. Not a half inch, about a quarter of an inch I would say. The weight would put that down.

Mr. Knowlton: There is a space anyhow.

The Witness: These are Canadian egg trays.

By Mr. Matson:

Q. And these china eggs you have used are the regular nest eggs which you use to inspire the chickens to lay large [fol. 891] eggs?

A. That is right.

Q. Do you know what size eggs those would be if they were natural eggs?

Mr. Knowlton: He gave that.

The Witness: No, I don't. I think they would be extra fancy heavy weight.

By Mr. Matson:

Q. In connection with your Exhibit No. 54, which is a release by the Department of Agriculture dated August 1, 1950, did you not cooperate with the Department of Agriculture and other agencies in the conduct of the tests which led to the conclusions expressed in Exhibit 54?

A. Which conclusion do you mean, the last paragraph?

Q. All of the conclusions in there.

A. No, sir, this particular part we were not a cooperator in.

Q. In what extent did you cooperate, then?

A. In the other one, No. 55, we did. No. 54 was a product of USDA research itself.

Q. You have seen another departmental bulletin entitled, "Inner Packing Materials for Egg Cases, the Result of Studies Conducted in 1948-1949," have you not?

A. Yes, that is right.

Mr. McDonald: I object to that, Mr. Commissioner. That is not part of the testimony of the witness. I submit it is not proper cross-examination.

[fol. 892] Commr. Mitchell: Overruled. I think he can testify. He has introduced these others. Go ahead.

By Mr. Matson:

Q. As a matter of fact you were supplied with a large number of copies of this bulletin, were you not?

A. I think so.

Q. And on the first page of the text there is a list of co-operators in the tests conducted, is that not right?

A. That is right.

Q. And among those is the Railroad Perishable Inspection Agency?

A. That is correct.

Q. Did you represent the Railroad Perishable Inspection Agency in that work?

A. Either myself or some of our people, yes.

Q. The material included in Exhibit 54 was taken from the tests represented by this study, is that not right?

Mr. McDonald: If you know.

The Witness: No, I don't——

By Mr. Matson:

Q. You don't know whether it was or not?

A. No.

Q. Are you prepared to submit this study which I have referred to as an exhibit here, or was that not your intention?

A. No, sir, that is not my intention.

Mr. Matson: I am sorry, we don't have enough copies ourselves, or we would put it in.

Commr Mitchell: Well, if you have two copies they can be [fol. 893] presented here and you could furnish them. Do you have copies? Does the department have copies?

Mr. Schilt: I only have a sample copy or a single copy, Mr. Commissioner.

Commr. Mitchell: Are copies available?

Mr. Matson: I think so, probably so. We would be glad

to supply copies for the parties and for the record. The copy which Mr. Schilt has here has a lot of his notations on it.

Commr. Mitchell: You can do that if you want to or do you want to introduce that when you put on Mr. Schilt.

Mr. Matson: I will save it for Mr. Schilt then.

Commr. Mitchell: Yes. Then you will furnish copies later on?

Mr. Matson: I will be glad to.

Commr. Mitchell: All right. Any further cross examination?

Mr. Matson: Yes, I have some more questions.

The Witness: I have an extra copy here.

Commr. Mitchell: If you have enough copies for the reporter, you can furnish the others.

Go ahead, Mr. Matson.

By Mr. Matson:

Q. Have you made any study of damage in egg shipments in which a distinction was made between medium sized eggs and large sized eggs?

A. No, we haven't.

Q. Do you know the difference in the cost of the new type inner packing materials distinguished from the type now in use?

[fol. 894] A. My impression is that there wouldn't be any difference, but maybe there will be a slight difference. It is not in full production yet, you see.

Q. You have referred to the departmental research which showed according to your statement that the general average of shell damage packed at rail point of origin is approximately three per cent, which you say is a reliable index of normal damage in that kind of egg. That three per cent represents a numerical calculation of the checked eggs in the case, does it not?

A. Checked or leakers or stained.

Q. In other words, if in a thirty-dozen case of eggs you had three per cent of them check eggs that would be an accordance with your statement?

A. That is right.

Q. At page 4 of your statement you referred to use of

impact registers and you stated that the use of impact register findings produced some improvement in the destination outturn. Do you have any figures with you or any data with you upon which that statement was predicated?

A. No, I haven't. That would apply to the various methods of loading we tried in relation to the use of recorders which would show the handling the car got enroute between point of origin and destination.

Q. What did the recorder indicate as to the place enroute that the rough handling took place?

[fol. 895] Commr. Mitchell: Haven't we got this in the record?

The Witness: I don't think——

Mr. Matson: I don't think there is enough of it in the record, Mr. Commissioner. In fact I don't think this particular question has ever been answered.

Commr. Mitchell: Well, go ahead if you can answer it.

The Witness: I could answer that only in a very general way.

By Mr. Matson:

Q. Well, do the best you can.

A. What?

Q. Do the best you can.

A. In a general way.

Q. Yes.

Commr. Mitchell: Well, answer it if you can. If you can't, say so.

The Witness: Most of the excessive handling or the impacts are in switching movements, not in road haul, but those impact recordings show a variety of things. It shows the car delivered in good order with a very severe impact. It also shows a car with no impact delivered in damaged condition, bad order.

By Mr. Matson:

Q. You say that as a general proposition the rough handling was during the course of switching. Can you break that down a little further and tell us whether that was cross town switching at points such as Chicago or switching in the hump yards in New Jersey?

A. No, sir, I can't.

[fol. 896] Q. Have you endeavored to ascertain just exactly whether this rough handling takes place after it gets to the vicinity of New York?

A. No, sir, we were doing research work on trying to get at the causes of damage and it didn't make any difference where the impact occurred in that kind of a study.

Q. You made no effort to find out where those impacts predominated other than to state generally that it was during the course of switchings?

A. That is right, the carriers themselves did that part of the investigating.

Q. Will you look at Exhibit No. 55, please, particularly the photographs on pages 11 and 13? Is it your opinion that the adoption of the new type packing materials would reduce damage in the situation as depicted in those photographs?

A. Yes, but that doesn't control the whole situation. You have improper loading right there in the photograph on page 11.

Q. You mean improper bracing?

A. That is right. I think that is what it says. Yes, it does say so and there wasn't enough slack taken up in that load either.

Q. Now if the new type filler materials were used do you think that it would have made any difference in that case?

A. I think it would. The better a case is packed the better it will carry.

[fol. 897] Commr. Mitchell: Any further cross examination?

Mr. Blanchard: I have a few questions. Are you through, Mr. Matson?

Mr. Matson: Just one more question.

By Mr. Matson:

Q. On page 5 of your statement you refer to cars shipped from Utah to New York, and I am wondering whether those cars are included in Mr. Hodkinson's Exhibits 48 to 52.

A. I think they are, yes, sir. His statement included all 1950 cars at New York.

Mr. Matson: We are having a little difficulty finding any Utah shipments in Mr. Hodkinson's exhibits.

Mr. Hodkinson: I didn't enumerate them all, Mr. Matson. I gave you a sample.

Mr. Reilly: He only showed the origin, Mr. Matson, of certain cars, not necessarily of Utah cars.

Mr. Matson: Oh, I didn't understand.

Mr. Reilly: Mr. Hodkinson explained that, I believe. I believe the record shows it.

Mr. Matson: Thank you. It got by me.

Commr. Mitchell: I think that is the record.

Mr. Matson: That is all, Mr. Jensen. Thank you.

Commr. Mitchell: Mr. Blanchard?

By Mr. Blanchard:

Q. Mr. Jensen, you are familiar are you not with the fact that the United States Department of Agriculture prescribes certain standards governing the sizes of eggs, that [fol. 898] is, they must be of a certain weight before they can be sold as extra large and not less than a certain other weight if they are to be sold as large and so on down to the large, medium or small eggs?

A. That is grade specifications.

Q. Yes.

A. That is right.

Q. No, not grade specifications, weight specifications.

Mr. Knowlton: Weight classes.

The Witness: I presume so.

By Mr. Blanchard:

Q. I hand you the currently effective bulletin of the Department of Agriculture, Production and Marketing Administration, effective August 8, 1949, and ask that you tell me——

Commr. Mitchell: Isn't that all in the record? What was the doctor's name from the Department of Agriculture——

Mr. Matson: Miller.

Commr. Mitchell (Continuing): —who testified to all of this, Mr. Blanchard?

Mr. Blanchard: Yes, Mr. Commissioner, but this is August 9, 1950.

Commr. Mitchell: Well, put it in but I think we covered that very carefully and very ably.

Mr. Knowlton: Has it changed?

Mr. Blanchard: Not this particular item, no.

[fol. 899] Commr. Mitchell: Well, go ahead, let's go. But I don't think we ought to repeat.

Mr. Matson: That was the witness Hammond.

Commr. Mitchell: Yes, Dr. Hammond. He did a very good job.

By Mr. Blanchard:

Q. You have before you a series of glass eggs with which you made some experiments. Would those eggs if natural instead of glass fall within the classification of extra large, large, medium or small eggs?

A. I am not qualified to answer that.

Q. If they were extra large the test you made about picking up the egg case and dropping them would only be a true case as to extra large eggs shipped, would it not?

A. It might be, provided they are graded as closely as these glass eggs are made.

Q. Well, do you know whether they are made to simulate an extra large egg as described by the government or a pullet egg?

A. I don't know how they are made. They look like large eggs to me.

Commr. Mitchell: He testified four or five times that he doesn't know, Mr. Blanchard, not only for you but for other lawyers. I think you ought to stick to the record and material cross examination.

By Mr. Blanchard:

Q. Do you know whether or not the eggs moved, were actually moved by you by rail, which were inspected by your people at New York, were eggs of this size, the glass eggs, [fol. 900] or larger or smaller?

A. Well, we have had all sizes of eggs moved by rail into New York.

Q. Well, doesn't it follow then that the test you made of lifting up the carton and only two of them dropping out would only be typical if the eggs you inspected were the same size as these glass eggs?

A. That is correct.

Q. And the same is true of your wooden eggs, is it not?

A. Oh, yes.

Q. Now, may I see one of those cartons that you referred to as a retail package?

Commr. Mitchell: I think you ought to stick to material cross examination. This is just a complete waste of time, Mr. Blanchard. We didn't come here for that purpose.

Mr. Blanchard: It is very revealing I think.

Commr. Mitchell: Why it was clearly demonstrated there. Every one knew that.

By Mr. Blanchard:

Q. I hand you what you described as a retail carton. Do you know whether or not those cartons just as they are packed six to a layer on each side of a case are not today being shipped in egg cases by rail?

A. Very few.

Q. Well, do you know whether or not they are?

A. No.

[fol. 901] Q. But you must know of some or you wouldn't have said very few.

A. Oh, I have heard of them. I haven't seen them and have no record of them.

Q. But you have heard of such movement?

A. That is right.

Q. Do you propose, if every egg moved by rail was packed in this kind of a carton enclosed in a wooden or fiber board case, do you propose to exempt such shipments from your proposed tariff as to tolerances?

A. I am not proposing anything in that direction.

Q. Well, you have a tariff on file here, haven't you, that is under suspension?

A. It didn't apply to this kind of a pack.

Q. Would it apply to eggs packed in this kind of a container and then those containers packed in an ordinary

wooden or fiber board egg case? Would your tolerance that you are proposing apply to such a shipment?

A. That is right, it would.

Q. So what is the point of a shipper using this if he isn't going to gain anything?

A. He would get his eggs delivered in good order, that is the point.

Q. Well, shouldn't he get them delivered in good order anyway?

A. No.

Q. Now, all of these conditions you described in your [fol. 902] testimony, that is, the eggs having grown as you said and having become larger, were these conditions peculiar to New York City or are they nation-wide conditions?

A. I was quoting a department statement, but it is a true statement applying to all eggs produced everywhere.

Q. Then nothing you said in that line can be turned to to find out why the situation in New York is so much worse than it is any place else, can it?

A. I covered that in another statement.

Q. Will you answer the question?

A. Let me have it again, please.

(Question read.)

By Mr. Blanchard:

Q. And these trays that you spoke of so highly, if every shipper in the country used those, you would still propose to apply your tolerance on them, wouldn't you, in your proposed tariff?

Mr. McDonald: Mr. Commissioner, I think that is very obviously far too far afield. Mr. Jensen is a witness. He is not proposing anything.

Commr. Mitchell: I think he has already answered that question.

Mr. Blanchard: He has answered it as to the other package.

Commr. Mitchell: Let's be reasonable, Mr. Blanchard. We are interested in having a record built up here that we can use, not as to the length of it. It ought to be cut down. I [fol. 903] think he has answered it. It will be sustained.

Mr. Blanchard: Very well, if he has answered it I don't want another one. That is all.

Commr. Mitchell: Any further cross examination?

(No response.)

That is all, Mr. Jensen.

(Witness excused.)

Mr. Knowlton: We will offer Exhibits 53 to 55, inclusive.

Commr. Mitchell: Is there objection?

(No response.)

They will be admitted.

(Respondents' Exhibits Nos. 53, 54 and 55, Witness Jensen, were received in evidence.)

Commr. Mitchell: Call your next witness.

Mr. Knowlton: That is all we have, Mr. Commissioner.

Commr. Mitchell: Well, that is all for the railroads. What about you, Mr. Matson?

Mr. Matson: I would like to recall the reminder that I made at the Los Angeles hearing, that there are some things which the respondents in this proceeding were supposed to produce and they haven't done it yet.

Mr. Knowlton: Now, Mr. Matson, we tried to find out, the Commissioner tried to find out from you at Los Angeles what it was, and I am going to hand him a transcript on that point.

Commr. Mitchell: Well, what is it now, Mr. Matson?

[fol. 904] Mr. Matson: It so happens that we had gone through the record. I thought that was the obligation of the respondents to do that, to find out where they were remiss and to supply the missing evidence.

Mr. Knowlton: I think you would have to let us know and I have received no word and I relied on the record.

Commr. Mitchell: Now, Mr. Matson, you tell us what the respondents haven't furnished yet that you think should be furnished.

Mr. Matson: At page 76 of the record at Chicago, on July 26th, Mr. Blanchard requested certain information. Now,

whether he wants to pursue that is up to him. I am just pointing out what hasn't been done.

At page 180 in the same volume——

Commr. Mitchell: Was there information that you requested, Mr. Matson?

Mr. Matson: Yes.

Commr. Mitchell: Let's have what you asked and let the others ask for what they want. It isn't your duty to furnish the testimony for these other men, is it? You go ahead with what the department requests.

Mr. Matson: I think that orderly procedure would suggest that if a request is made upon the railroads and they agree to supply the information, that they should do so. Now, this is merely in a spirit of cooperation that we have [fol. 905] looked up these page numbers, and if they want to take a note of them, why, I can give them very rapidly.

The last one is a request that I made myself. There are five instances altogether.

Commr. Mitchell: You state the request you made. As far as the others are concerned, I think it is their duty if they desire to have it presented to call it to the attention of the Commission. I don't think it is the duty of the Department of Agriculture to have to check that over. Whatever you requested, let's have that.

Mr. Matson: We are merely trying to be cooperative, Mr. Commissioner.

Mr. Knowlton: We are still trying to find out what he wants.

Mr. Matson: Our request is on page 363 of the record at Chicago on July 27, 1949, and at that point we requested that Exhibit No. 15 of the Witness Piehl be supplemented to show the condition of the cars shown in that exhibit when they arrived at destination, and also to show the number of claims filed on those particular cars and the amounts of the claims, including the number of stains, checks and leakers.

Commr. Mitchell: Well, if you have that information the railroads will furnish it. They may furnish it by submitting a copy to the department and a copy for the record.

Do you want to go ahead? Do you have other witnesses?

Mr. Matson: We can go ahead with Mr. Schilt if you care to.

[fol. 906] Commr. Mitchell: All right, Mr. Schilt.

Mr. Blanchard: While Mr. Schilt is taking the stand I think perhaps I shouldn't be silent as to the request for information that I have made. I made the request. If the carriers choose not to furnish it that is their privilege. I have the right to rely on the well-known evidence rule, that evidence within their possession requested and withheld is presumed to be unfavorable to them in the proceeding.

Mr. Zearfaus: I don't know what you are talking about but it may not be relevant material.

Mr. Blanchard: If you will read the record you will find out.

Commr. Mitchell: The request has been made and if the railroads don't want to furnish it the Commission will then determine what the rule of evidence is.

Mr. Knowlton: What was the page of the record, Mr. Blanchard?

Mr. Blanchard: Page 76.

Commr. Mitchell: Go ahead, Mr. Matson.

You were sworn, Mr. Schilt?

Mr. Schilt: I was.

LEON SCHILT resumed his testimony as follows:

Direct examination.

By Mr. Matson:

Q. Are you the same Mr. Schilt who has previously testified in this proceeding?

A. I am.

[fol. 907] Q. Do you have a supplemental exhibit to introduce at this time?

A. I have.

Mr. Matson: May that be indentified as Exhibit No. 56?

Commr. Mitchell: It will be marked Exhibit No. 56.

(Government's Exhibit No. 56, Witness Schilt, was marked for identification.)

By Mr. Matson:

Q. What is the purpose of Exhibit No. 56?

A. Exhibit No. 56 consolidates into one statement pages 20 to 23, inclusive, of Exhibit No. 35 and page 5 of Exhibit No. 42. Lines 4, 14 and 24 in Exhibit No. 56 contain new statistics not heretofore shown in Exhibit No. 35 and Exhibit No. 42.

Q. What do those figures reflect as to trends?

A. Well, Exhibit No. 56 is a statment showing for corresponding periods in 1947, 1948, 1949 and 1950 the effects of the special regulations on shell egg traffic effective July 24, 1948, by a comparison of receipts of shell eggs in cases arriving by rail and by truck at eleven principal destination markets, the percentage variation in volume by each mode of transport during each period, and the percentage relationship of volume in each period to the corresponding periods in 1947.

Q. Do you have before you a copy of a departmental bulletin entitled, "Inner Packing Materials for Egg Cases—The Results of Studies Conducted in 1948-49"?

A. I have a copy here.

[fol. 908] Mr. Matson: May that be identified as Exhibit No. 57? Has one been supplied for the record?

Commr. Mitchell: You will have to supply that for the record but you can go ahead.

The Witness: Can Mr. Jensen lend us his copy for this purpose?

Commr. Mitchell: Yes.

Mr. Matson: The Department of Agriculture will undertake to supply all parties of record with copies of this exhibit. I understand the respondents already have a large supply of them.

Mr. Knowlton: No, you don't need to understand that.

Commr. Mitchell: Well, let's not have that talk. It doesn't make any difference. I am not interested in that.

Mr. Knowlton: We would like to ask for copies because Mr. Jensen sends these copies out to his men and we don't have them.

Commr. Mitchell: He just stated he will furnish them to all parties of record.

The booklet will be marked Exhibit No. 57.

(Government's Exhibit No. 57, Witness Schilt, was marked for identification.)

Mr. Matson: That is all on direct examination.

Commr. Mitchell: Cross examination.

Cross-examination.

By Mr. Reilly:

Q. Mr. Schilt, how do you know that the relationship here shown between rail delivery and truck delivery is solely [fol. 909] related to the effect of special regulations on shell egg traffic effective July 24, 1948?

A. I believe I explained that more fully in my testimony in connection with Exhibit No. 35, Mr. Reilly.

Q. Well, explain it again, if you will, for the record how you know that it is solely related to the effect of that regulation?

A. If you will bear with me one moment I will check that particular part of the testimony.

Commr. Mitchell: Well, state it, Mr. Schilt, if you know.

The Witness: It is shown on page 541 in my remarks in connection with the effects of this exhibit or the statistics portrayed by this exhibit as follows: "My reason for using January to July, 1947, as my base period in this statement was to bring out the facts that the rail carriers were gradually losing the egg traffic before the current regulations became effective. This will be noted on Lines 15 and 16 under Column 4."

Now, that is in connection with Exhibit No. 35. I will give you the corresponding lines in the new exhibit.

Commr. Mitchell: Well, go ahead and explain it. We can ascertain that.

By Mr. Reilly:

Q. In other words, Mr. Schilt, the railroads had started to lose the traffic prior to the effective date of the special regulations on shell eggs, is that not correct?

A. Yes, sir.

[fol. 910] Q. Now, I am asking you a very simple ques-

tion. In your Exhibit No. 56 you say that this diversion to the trucks as against the rails is solely because of the effect of the special regulations on shell eggs. I want to know how you know that. That is simple.

A. Oh, I know that from my personal calls that I made among people in the industry and their statements to me have been borne out by the receipts of arrivals reported by the Department of Agriculture at the different terminal markets.

Q. Is that what you learned at the Los Angeles hearing, Mr. Schilt?

A. I learned that at all of the hearings that I attended in connection with the effects of the special regulations that went into effect on July 24, 1948.

Q. How many shippers did you call on to ascertain why they had decided to ship by truck as against rail, for the purpose of this Exhibit No. 56?

Commr. Mitchell: Can you answer it, Mr. Schilt?

The Witness: I am trying to think of those that I spoke to and whether or not they were shippers or receivers.

By Mr. Reilly:

Q. Well, shippers or receivers.

A. I spoke to quite a number of receivers in the New York market who informed me that since the special egg regulations went into effect they are now shipping in the majority of their eggs by truck. I would say I spoke to at least a half dozen receivers in New York City. If you want names I can give them to you.

[fol. 911] Q. Well, a half dozen in New York City. How many did you talk to in Chicago, Illinois?

A. I haven't contacted any receivers here in Chicago.

Q. Then the diversion that you show here to the trucks as against the rails in Chicago, Illinois, is not based on anything except figures taken from the Department of Agriculture, and you don't know the reason for the diversion personally, do you, at Chicago?

A. Well, I would prefer to let the figures for the corresponding periods speak for themselves.

Mr. Reilly: Mr. Commissioner, I think the question is a proper one.

Commr. Mitchell: Well, do you know, Mr. Schilt? If you do, why answer it.

The Witness: I don't know particularly at Chicago, but I do know in connection with New York, and since——

Commr. Mitchell: He asked you about Chicago. As far as you know in Chicago you rely entirely upon the figures of the Department of Agriculture?

The Witness: That is correct, sir.

By Mr. Reilly:

Q. Those figures don't show the reason for the diversion from rail to trucks as being solely related to the effect of the special regulation on shell eggs, do they?

They simply show there is a diversion?

A. Yes, they do show there is a diversion.

[fol. 912] Q. And no reason ascribed for the diversion?

A. No, sir, they do not.

Q. So that you don't know as to Chicago or Philadelphia or Boston or San Francisco, Los Angeles, Baltimore, Atlanta, Cincinnati, Detroit, New Orleans, that the diversion to trucks is solely ascribable to the effect of the special regulations on eggs, do you?

A. That is a mighty long question, Mr. Reilly.

Q. All right. I will make it very simple.

Commr. Mitchell: Well, it is a simple question. You rely entirely for all of these cities other than New York upon the figures that you got——

The Witness: That is correct, sir.

Commr. Mitchell: (Continuing) —from the Department of Agriculture as to the diversion?

The Witness: Yes.

By Mr. Reilly:

Q. And none of those figures show any reason as to why the diversion occurred but simply show that there is a diversion?

A. The figures show that since the rules and regulations have gone into effect——

Q. No, will you answer my question, please?

Commr. Mitchell: He has already answered it as I understand the record.

You don't claim that any of the figures show any reason [fol. 913] for the diversion shown except that there was a diversion?

The Witness: That is correct, sir.

By Mr. Reilly:

Q. Then your caption of your Exhibit No. 56 is incorrect in so far as it reads, "Statement showing for corresponding periods in 1947, 1948, 1949, and 1950, the effects of the special regulations on shell egg traffic effective July 24, 1948," is that not true? All your exhibit shows is that there has been a diversion to the trucks and you don't know the reason for it, do you?

A. And the exhibit also shows that the rate of diversion shown has been increased since the special regulations went into effect. That is the point that I have been trying to demonstrate in this exhibit.

Q. Do you know whether or not the question of rates entered into the diversion?

A. It is my opinion that the rates entered into the diversion.

Q. Do you know whether or not the differential in rates entered into the diversion, of your own knowledge?

A. I would say that the rates to some extent may have affected the change in receipts between the periods shown, for example, on lines 1 and 2 between 1947 and 1948.

Q. Do you know of your own knowledge?

A. I can not state that as a fact.

Q. So you don't know?

A. No, I don't know. I will answer that way.

[fol. 914] Q. All right. Thank you. Do you know whether or not the question of service entered into a diversion from the rails to the trucks?

A. Yes, I do know that.

Q. You do. So that the diversion which you purport to ascribe solely to the special regulations on shell eggs had other reasons for being diverted to the trucks, is that not true?

A. Well, the service angle involved——

Commr. Mitchell: Can you answer the question, Mr. Schilt? He asked you a straight question.

The Witness: May I have the question read back?

Commr. Mitchell: Read the question to him, please.

(Question read)

The Witness: That may be true.

By Mr. Reilly:

Q. You have attended all the hearings I believe in this case, have you not, Mr. Schilt?

A. I have.

Q. Have you heard various witnesses testify that the diversion from rail to trucks was because of reasons other than the effect of the special regulations on eggs?

A. Yes, I have, and I believe the basic reason was the tolerance rule that was established on July 24, 1948.

Q. You heard various other reasons ascribed by witnesses for the diversion to trucks——

A. I did.

[fol. 915] Q. (Continuing) —for the diversion to trucks from rails other than the special regulations?

A. I did.

Q. So that your Exhibit No. 56 does not purport to represent solely the effects of special regulations on shell eggs, does it?

A. My exhibit portrays the changes——

Mr. Reilly: I think that question can be answered yes or no, Mr. Commissioner, whether he purports to show solely the——

Commr. Mitchell: Read the question to him, Mr. Reporter.

(Question read)

The Witness: It does not, but it does show what has happened to the rail tonnage since the special regulations went into effect.

By Mr. Reilly:

Q. In addition to the people who may have diverted by reason of a rate differential or by reason of a service fac-

tor or for any other reason which you don't know, is that not true?

A. That is correct.

Q. So that you couldn't give any percentage figure on any of the diversion and say what proportion of it was ascribable to the special regulations and what proportion was ascribable to anything else?

A. No, I could not do that, Mr. Reilly.

Mr. Reilly: That is all. Thank you, Mr. Schilt.

[fols. 916-918] Commr. Mitchell: Any further cross examination?

(No response)

That is all, Mr. Schilt. Thank you very much.

(Witness excused)

Mr. Matson: Was there cross examination on the Los Angeles exhibit that was deferred until this hearing?

Commr. Mitchell: As I understand it, there was no cross examination. You didn't want to cross examine?

Mr. Knowlton: No.

Mr. Matson: Exhibits 56 and 57 are offered in evidence, Mr. Commissioner.

Commr. Mitchell: Is there objection to the offer of Exhibits 56 and 57?

(No response)

They will be admitted.

(Government's Exhibits 56 and 57, Witness Schilt, were received in evidence.)

* * * * * * *

[fol. 919] LLOYD C. DELL was recalled and testified further as follows:

Direct examination.

The Witness: My name is Lloyd C. Dell, 1202 Jones [fol. 920] Street, Omaha, Nebraska, and I am General Traffic Manager of and represent Fairmont Foods Company,

Omaha, Nebraska. I have been in the Traffic Department of the Fairmont Foods Company, and its predecessor company, The Fairmont Creamery Company, since 1918. Prior to that time I was in the local agency service of the Burlington Railroad. My duties have to do with handling of claim matters, rate adjustments, transit accounts, bills of lading, and other varied matter pertaining to a modern traffic department.

Fairmont Foods Company makes thousands of egg shipments annually from plants scattered throughout the middle west and southwest to destinations throughout the United States and for export to such countries as Cuba, Mexico, the United Kingdom, and in Europe. Until the war stopped the service we shipped hundreds of cars containing shell eggs Rail-Lake-and-Rail, via boat lines Duluth to Buffalo, using rail lines west of Duluth and east of Buffalo. Such shipments required transfer from car to boat and from boat to car. In all this handling, for years our claim record ran less than $1.00 per carload. Eggs at that time were packed with the old style slotted strawboard fillers which gave the eggs very little protection. Eggs today are packed in modern fillers and moulded flats. Each egg is at all times separately contained and protected. With this protection a broken egg does not run down through the case and soften up the fillers.

[fol. 921] There are now many egg breaking plants scattered throughout the territory which provide a ready market during surplus production for the so-called defective eggs, i. e., extra-large, extra-small, dirties, and checked eggs. Eggs of this class, together with many shipments of current receipts, go into breaking stock.

Tracing the background of claim payments per car on traffic handled by the rail carriers for my firm, I shall start with the year 1947 when I commenced keeping precise running records of damages occurring and then on down through December 31, 1949.

In 1947 our claims on shell eggs averaged $6.08 per car. In 1948 claims jumped to $19.62 per car, and for the year of 1949 our average claim payment was $3.05 per car. This compares with the national average for the year 1947 for

all Class I railroads as reported by the AAR of $83.72 per car, and for 1948 of $90.23 per car.

The AAR reports show for the year of 1949 a payment averaging $145.71 per car.

Briefly running back on the AAR reports the claim payments per car show nationally:

1941—$3.15	1943—$10.37	1945—$28.80	1947—$83.72
1942—$4.79	1944—$13.41	1946—$54.40	1948—$90.23

1949—$145.71

These figures represent an economic loss which I feel should be averted by proper cooperation between the [fol. 922] shipper paying the freight charges and having his capital tied up, on the one hand, and the rail carriers on the other hand, rather than requiring the shipper to stand a tolerance penalty that is now before us.

When we discovered that our claims per car for 1948 were greatly exceeding those of 1947, we immediately started an investigation to find the reason for it.

We checked the first six months of 1948 and found that we had moved 309 cars of eggs from our midwestern branches to various destinations throughout the United States and for export. Of these, 53 cars contained less than 600 cases out of which we had 4 claims with average per car of $3.59 while from the remaining 256 cars containing 600 cases each, we had 34 claims with average per car of $24.95. Further investigating, we then took the lettering and number of each car on which we had a claim and wrote to the owner for its age. We found that all 38 cars on which we had claims were originally built from 1917 to 1931.

We were so convinced that the age of the car had much to do with creating claims that we immediately requested our various branches to check the stencil date on the side of each car offered for loading and make certain it had been built or rebuilt within recent years before loading with shell eggs, otherwise to reject it.

I would like to add, however, that in addition to the excessive damage resulting from old cars, the rough and careless switching of the egg cars is the cause of many claims. [fol. 923] I have seen, and have had many of my associates report to me, the fact that egg cars are bumped so hard.

in switching that they tend to buckle up in the middle from the terrific force applied. If a modern transport truck was to be struck by another object as hard as some of our railroad egg cars are struck in switching, the truck would be considered a wreck, as it could not stand the impact. The fact that a truck cannot stand such rough handling, undoubtedly, is the reason why the damage is so much less when eggs are moved by truck. Eggs, no matter how carefully they are packed, cannot stand the rough handling they sometimes get in the average railroad car during switching.

At this point I would like to call attention to the attached excerpts as related to eggs-in-the-shell, taken from our carload packing and icing instructions sent to various branches, which includes Omaha, two or three times annually.

Mr. Staley: Mr. Dell, wouldn't you like those excerpts to be included as an exhibit in the record?

The Witness: This whole file, they are attached to these and the entire file should be.

Mr. Staley: I have separated copies of the excerpts. I have three copies for the Commission, and I wonder if it wouldn't be proper to offer those as an exhibit so that they would be——

The Witness: I think that would be okay.

Commr. Mitchell: It will be marked exhibit No. 58, consisting of five pages.

[fol. 924] (Respondents' Exhibit No. 58, Witness Dell, marked for identification.)

The Witness: I might state right now that in addition to these excerpts I have many others that date back for the past twenty years showing the method in which we pack our eggs and instructions that go to our various branches from two to three times annually, for the purpose of handling a crate, the way it should be handled. I have penciled copies of a few others in case anyone wants to see or hear them. I just picked out these because it would make the record too dense.

Commr. Mitchell: All right.

The Witness: This is a practice of ours of long years' standing. These excerpts show the care with which we

stow the lading and indicate something as to the reason for our low damage account.

Despite our checking of old equipment and rejecting it when we could, our claims, however, for entire year of 1948 averaged $19.62 per car. In the latter part of 1948 and throughout 1949 better cars were used for our egg shipments, and our per car average claim for year 1949 is $3.05.

Late in 1949 and so far this year, practically all our eggs-in-the-shell have moved by truck due to lesser freight charges and lesser claims via that method than by rail.

It is common knowledge in the industry that prior to 1941 better cars were furnished shippers for egg loading [fol. 925] and train crews gave such cars more attention than they do at the present time. During war years, 1941 to 1945, every available car was pressed into service and shippers were obliged to use any cars furnished by carriers. O. D. T. regulations compelled the egg shipper to increase his egg load from the usual 400 case unit to 600 cases per car. Due to shortage of egg case material, cases were re-used instead of new cases being used for each shipment.

Getting back a little into history: In 1919 I attended a conference in Chicago called by Mr. C. H. Dietrich, who at that time, as I remember, was Chairman of the Freight Claim Agents Association. This meeting was held for the purpose of getting to the bottom of the terrific losses on egg shipments arriving at New York City. There was a quarrel between the receivers at New York and the railroads who would not pay for losses on eggs unless the damage was visible on the exterior of the case. An exhaustive survey was made with the result that eggs from country merchants shipped as current receipts contained about 5 per cent of defective eggs which became a loss and caused other damage when such eggs were shipped by railroad.

As a result, the 5 per cent rule on current receipt eggs, not rehandled or repacked, was put into the tariff.

It is my opinion that we now have fillers and flats differing greatly from the old ones and that this 5 per cent of defective eggs cannot become a loss in transit when shipped [fol. 926] unless handled more roughly than eggs should ordinarily be handled in transportation.

A spot check on ten inbound consignments of current

receipt eggs made at our plants in Texas, Oklahoma, Kansas, Nebraska, North and South Dakota shows the average number of so called defective eggs (as previously defined) per case to be less than a dozen, approximately 3 per cent. At Omaha, for example, these "defective" eggs which could contribute to transit loss, average about six eggs per case, approximately 1.7 per cent in current receipts from our sources of supply which are farmers, country merchants, and small produce concerns. We therefore, can reach no other conclusion than that the present 5 per cent tolerance rule is *now* too high.

On outbound loads of rehandled and repacked eggs from our plants, inspections are made regularly by selection of 15 to 20 or 30 cases per load at random and show an average of 98/100 of 1 per cent of defective eggs. Hence the proposed 4 per cent rule is entirely uncalled for and is not justified. Other commodities are not subject to such a penalty.

At present, new cases, new fillers, flats, and cushions are required except there be an imposition of a rate penalty, and this prevents considerable damage that may have been present in the usual run of egg traffic in war years. However, with the various rate increases on the railroads which were not followed by the truck lines, an increasing amount [fol. 927] of this business has gone to the over-the-road carriers.

The latter's claim record with my concern has been very good, for example, in 1948 it represents only 34 cents per load handled; in 1949 including 4 loads that encountered traffic mishaps, our claim account amounted to only 70.9 cents per load handled and for first six months of 1950, 22.6 cents per load.

We, therefore, believe that if the carriers pay more attention to the type of refrigerator car furnished the shipper and the shipper pay more attention to the type of car he loads, and to stowing, buffing, etc., egg claim payments can be considerably reduced.

In view of these circumstances, the railroad shippers should not be subjected to any tolerance penalty on this egg traffic any more than the general line of traffic that is handled by the railroads as common carriers.

These exhibits under exhibit No. 58——

Commr. Mitchell: They will be inserted in the record. We do not care about those.

Mr. Staley: That is offered as an exhibit.

Commr. Mitchell: All right.

By Mr. Staley:

Q. Mr. Dell, I have a few questions. Ordinarily you don't ship eggs into the New York market, do you?

A. No, not a great many. There are a few that go to New York, only for export.

Q. The ones that are exported are not inspected at New [fol. 928] York, are they?

A. I believe not.

Mr. Staley: That is all.

Commr. Mitchell: Cross examination.

Cross-examination.

By Mr. Zearfaus:

Q. Mr. Dell, when you speak about those export shipments going through the port of New York, are those figures included in your statement at page 2 of your prepared statement where you show your average claim payments per car for the years 1947 and 1948 and 1949?

A. Yes, they are.

Q. Now, I believe you did tell us how you packed those eggs for export, going through the port of New York. Will you tell us——

A. They are packed in the filler flat as Mr. Jensen showed this morning, our export eggs, although we do use some of those for domestic purposes.

Q. And they are in wooden crates, are they not?

A. They are all in wooden cases.

Q. And those cases are wired?

A. They are wired.

Q. Do you use the same precaution in connection with the shipments which are not exported?

A. Other than they are not wired. We use nothing but a wooden case.

Q. But you do not wire them?

[fol. 929] A. We do not wire them.

Q. Who has been doing the inspection for you at New York City, your own folks, or do you employ an outside inspection bureau?

A. Well, our New York Office usually takes care of that, our manager at New York. He has his boys go over there and see that they are placed on the boat, and if there would be a claim, why, we would certainly hear about it because you tell us——

Q. Yes. Well, irrespective of New York, who does your inspection of these or who did your inspection of these eggs in 1947 when you say that your claims averaged $6.08 per car. Were they your own employees or outside people?

A. No, those were our own employees.

Q. How about the year 1948, Is the answer the same?

A. Well, in 1948—that is when I started my own investigation on eggs. We knew the claims were clim-ing to what they did, and when eggs get over about $3. or $4. a car, by God, then there is something wrong, so I started my own investigation on that, and I took the first six months of 1948 to determine—our sales department, by the way, had called me downstairs to inform me that practically every car of eggs shipped by rail was damaged. Well, I knew it wasn't and as a result I checked a six month period to find out just what happened, with this result. It is the old type car.

Now, to prove my point there, these cars——

Q. All I want to ask you is who makes the inspection, is [fol. 930] it your employees or some outside agency, that is the only question I had, Mr. Dell.

A. No, it is our own employees that make those.

Q. That was in the year 1948?

A. 1948, yes.

Q. And how about the year 1949, was it the same?

A. The same thing.

Q. The same thing. Now, did you divert your shipments from the rails in the year 1949 to trucks?

A. Yes. When the rates got so out of line, why, we did divert to the trucks.

Q. And generally speaking——

A. And today most of that traffic is moving by motor carrier.

Q. And that is on account of rates primarily?

A. Mostly rates and lesser damage.

Q. Does service have anything to do with it, Mr. Dell?

A. It has a little to do with it. For instance, they can beat the rails by one day, 24 to 36 hours, on the movement from Nebraska to the Atlantic seaboard.

Q. Are you still shipping to New York for export?

A. We haven't had any in 1950, but——

Q. Any at all or do you mean by rails?

A. No, no exports in 1950, but I did have in December 1949*00* I had five cars. Those were the last cars that moved for export.

[fol. 931] Q. That is either by rail or by truck?

A. That is right.

Q. Yes. Now, at page 5 of your prepared statement, Mr. Dell, you express an opinion that, "We now have fillers and flats differing from the old ones and that a 5 per cent tolerance on current receipt eggs is no longer warranted," or in effect, that is your total?

A. That is right.

Q. Did you make any study to determine the extents to which the current receipts show damage?

A. Well, we handle very few current receipts out. We bring them in, and those are all rehandled and repacked. Now, the current receipts that we send, ship out, for the market, are very few. That is where we ship a great many frozen eggs, and that is where we get our supply of frozen eggs, from the defective egg that is in the current receipts.

Q. As it arrives at your plant from the country point, is that what you mean?

A. From the country points and on our trucks that makes these rounds once or twice or three times a week.

Q. Yes.

A. So we don't ship a great many current receipts but our survey had shown that a dozen eggs per case was the average over a large area.

Q. Well, as a matter of fact, then, you made no special [fol. 932] study to determine whether or not under the present fillers and flats and so forth that the eggs arriving at

your plant from the country points would show a 5 per cent breakage and so forth?

A. Well, we know that they do not. They don't show as a 5 per cent tolerance.

Q. Did you make such a special study?

A. Yes, that is what I said in here, they did.

Q. As they arrive at your plant from the country points?

A. An average of three per cent.

Q. Your average is about three?

A. Three per cent on the current receipts.

Q. Now, in the next paragraph there, you talk about a spot check of ten inbound consignments of current receipts made at your plants showed so and so. That was prior to rail transportation, wasn't it?

A. Yes, that is right.

Q. And to what do you attribute that breakage, transportion from the country point to your plant?

A. Well, I figured it this way. The way I look at it is that the ordinary current receipt as it comes from the local merchant or the small farmer contains approximately three per cent of defective eggs. Now, I made that spot check from these different states by—we have got quite a number of branches in each one of these states, and over all that is the picture as we saw it.

[fol. 933] Q. About how many consignments do you have of inbound current receipts at these particular plants that you mentioned here in page 5 of your prepared statement, Texas, Oklahoma, Kansas, Nebraska, North and South Dakota?

A. Yes. We made a spot check on ten consignments inbound from each state, you see.

Q. Of about how many would you receive? In other words, what would that represent of your total receipts in these states?

A. Oh, I would say a lot of those—they come in in trucks usually but I would say they would be—those trucks will bring in all the way from 300 to 500 cases.

Q. Yes, but you talk about ten inbound consignments. Can you give us an idea of what percentage those ten inbound consignments consist of the total receipts at those plants in those states?

A. Well, I see what you mean. My request called for these various branches to give me an idea of just what breakage we had in the current receipts, and they should take about ten. Now, how many they used I don't know as to the full total, but this is the result that I got from that investigation.

Q. Well, can't you give us any idea of how those ten compare with your total receipts?

A. Well, I would say it would total pretty much all that we have coming in. I would say 75 or 80 per cent of total inbound shipments during that period.

[fol. 934] Q. What period would that be?

A. Well, during the period they were accumulating.

Q. Well, can you tell us the dates or the number of months?

A. Well, that wasn't very many months because I accumulated that in just a very few months, probably three or four months.

Q. Well, can you tell us in these three or four months the total number of inbound consignments of current receipts at your plants in the states that you mentioned?

A. No, I believe I cannot. I don't believe I can tell you because I just don't know.

Q. Well, would you know whether it was near one per cent or fifty per cent?

A. I just said about 75 to 80 per cent.

Q. In other words, you mean ten inbound consignments would be 75 or 80 per cent of the total of your inbound consignments over a period of about three months?

A. Yes, where we made this spot check. I wanted this information back and I didn't want them spread over a year. I wanted it right now. I don't know whether——

Q. Do you understand my question, Mr. Dell?

A. I wonder whether I do or not.

Q. I am afraid you don't.

A. I sent out a request to our branches over the whole territory to give me the amount of defective eggs, the number of defective eggs in current receipts and they should take about ten consignments to do that.

[fol. 935] Q. Well, was that ten consignments in one day or——

A. Now that could be one day or it could be one month.

Q. Well, can you tell us how many cases or consignments would get at these plants during the course of a year?

A. No, I could not right off hand. They run up into a good many thousands of cases though. We ship a lot of eggs.

Q. Well, let us see. You say you have two consignments and that represents 80 per cent of the total consignments in these plants in these six states?

A. Now get me right. That 80 per cent represents that certain period in there that I was calling for this check. That don't mean throughout a whole year. It is for the time that I requested that. I wanted it as soon as I could get it. These plants——

Q. You do not know what period your men used in getting these ten consignments?

A. No, I do not.

Q. Now, in your next sentence you refer to a situation at Omaha. How many consignments were involved in that study?

A. Well, we have quite a number of trucks that go out and they make regular trips throughout the Omaha area. That same thing is true in all of our branches. They go right out and pick them up off of the farm or the little town, usually leave in the morning and get back at night.

[fol. 936] Q. Well, how many—excuse me.

A. Now they come in with a truckload of eggs and they also have poultry on their trucks so it is kind of hard to arrive at the exact number of cases.

Q. You do not know whether it was one truckload or ten truckloads or just what it was?

A. Well, we made a good check of it. We didn't try to skimp on it.

Q. Well, can you give us any idea of how many consignments were involved in this situation at Omaha?

A. Well I imagine about——

Q. Well, do you know sir? Of course if you don't know we don't want to press you.

A. It would be more or less of a guess.

Mr. Zearfaus: I do not think we should guess, Mr. Commissioner.

The Witness: I would say that it covered probably a month's period and there would be a lot of eggs come in. We have a lot of different trucks together to different areas. That is true at all of our plants.

By Mr. Zearfaus:

Q. You mean a lot of trucks coming in from areas to Omaha?

A. Yes. We have 2200 trucks—Fairmont operates 2200 trucks that go out—now, those are trucks that serve the stores and go out in the country and pick up produce. [fol. 937] Some of them bring in cream; some of them bring in poultry; some bring in eggs. Now eggs was one that I was interested in.

Q. You are speaking now of trucks bringing eggs in to Omaha?

A. Into Omaha.

Q. To your plant at Omaha?

A. So then they are rehandled and repacked. Then they are placed into storage and shipped out of storage to wherever the destination might be.

Q. And did you make a request then of your people at Omaha to make a study of this information for you?

A. I did.

Q. And did you——

A. And I helped do it.

Q. And how long a period did you take in making the study?

A. Well, I did that over the course of probably a month.

Q. You took a month's business?

A. Yes, we just took a month's inspection of cars and went through them, just what they showed.

Q. About a month?

A. Yes, I would say about a month. We tried to make it a pretty representative period.

Q. Were those eggs, eggs which originated in and around Omaha?

A. Yes, that is the Omaha area, but that same thing is true out around, oh, in other districts. We have them in Iowa and——

Q. Just answer my question at the moment, please.

[fol. 938] A. Yes, that would be the Omaha trucks that would do that.

Q. What would be the average trucking distance from these country points to Omaha which were involved in this study that you made?

A. Well, that won't be too great because they leave in the morning and they are back in there at night, sometimes a little late when they get back.

Q. They are just what you might term local movements, in and around Omaha?

A. Yes, in and around Omaha.

Mr. Zearfaus: I think that is all, Mr. Dell, thank you.

By Mr. McDonald:

Q. I have one or two questions I would like to ask if I may, please. At the top of the second paragraph on page 3 of your prepared statement, Mr. Dell, you refer to a six month's study that you made?

A. Yes, sir.

Q. That covers 309 cars?

A. That is right.

Q. As to 38 of them—excuse me, do I correctly understand that as to 38 of them you undertook to determine the year in which the car was built?

A. Here is what I did.

Q. Let me ask you this. Did you undertake to develop the year in which each of the 309 cars was built or did you only confine that investigation——

[fol. 939] A. No, I only confined it to the cars on which we had claims.

Q. And that was 38 cars, is that correct?

A. Thirty-eight cars, that is correct.

Q. Now, as to the difference, the approximately 271 other cars, so far as you know, is it true that each and every one of those might likewise have been built during the years 1917 through 1931?

A. Well, I would have no reason to feel otherwise because this is just an ordinary check, but all I wanted to get was the damaged cars.

Q. You are familiar with the testimony introduced in

this proceeding, Mr. Dell, by the Department of Agriculture, I believe, are you not?

A. Yes, more or less.

Q. That testimony, if my memory serves me correctly, indicates that there is approximately three per cent damage, if we may properly use that term on the average in each car of eggs offered for shipment. Will you assume at least for the sake of this question that that is what the record shows, and then let me ask you this question. You don't mean to say by anything you have said here that you have any reason to dispute the validity of that testimony by the Department of Agriculture, do you?

A. You are talking of rehandled and repacked eggs?

Q. I am talking of the evidence with respect to the fact that in shipments of eggs, there is approximately a 3 per cent element of damage included in shipments when they [fol. 940] are initially offered, more or less regardless of the type or grade of eggs.

A. You are talking of eggs as a whole. You have got your rehandled and repacked, your storage packed, and you have got your current receipts. Now I claim there isn't over 3 per cent in currents receipts.

Q. All I am asking you, though, is that you are not, so far as you are concerned, taking exception to any of the Department's testimony. You are simply saying what, from your personal standpoint, the facts may be with respect to your own eggs, isn't that so?

A. I wouldn't make a statement as to what the department found.

Mr. McDonald: That is all I have.

Mr. Reilly: I have just one question, if I may, Mr. Commissioner.

By Mr. Reilly:

Q. At the bottom of page 5, Mr. Dell, you state that on rehandled and repacked eggs there is an average of one per cent approximately, 98-100ths of one per cent?

A. That is right.

Q. Assuming that to be true, when these eggs are tendered to the carrier there is a percentage of damage of one

per cent, whom do you feel should bear that loss, the rail carrier, the shipper, or the consignee?

A. I claim the rail carrier should—if there is any loss above that, the rail carrier should pay it.

[fol. 941] Q. All right then——

A. For this reason.

Q. Yes?

A. When these eggs are rehandled and repacked, every defective egg is taken out of there, and those eggs are commercially sound when they leave the point of origin, and they will be received at destination as perfectly sound, commercially sound eggs. Before the war, as I stated in here, our losses were running less than $1.00 a car, and in fact they ran as low as 43 cents a car, when eggs were handled across the lake. Now, there is no reason why the carriers can't do that same thing today; they did it then with the old time fillers and flats——

Commr. Mitchell: Let us stick now to the question. We are wandering far afield here.

By Mr. Reilly:

Q. Mr. Dell, on page 5, the bottom, as I read the paragraph you say that after eggs are rehandled and repacked they show an average of 98-100ths of one per cent defective eggs. Is that correct?

A. That is correct.

Q. After they are rehandled and repacked they are tendered to the rail carrier with 98-100ths of one per cent of defective eggs?

A. That is correct.

Q. Assuming that that exists, do you believe the rail carrier should stand that loss, the shipper, or the consignee?

[fol. 942] Mr. Staley: I object to the question because it assumes a state of facts not in evidence, namely, that there is any loss merely on account of the fact that there are some checked eggs in the shipment when it leaves origin.

Commr. Mitchell: He ought to be able to answer that yes or no. There is no explanation due. You either know or you don't know.

The Witness: I can answer it that there would be no claim filed with a loss of 98-100ths of one per cent at destination.

Commr. Mitchell: Well, if there was a claim filed, Mr. Dell, let us answer the question. Do you think that the railroad or the consignee or the shipper—who should stand the loss if there was a claim. That is the question.

The Witness: Well, if it was in there when it started, why we should stand that loss.

Commr. Mitchell: You say there is 98-100ths or whatever the figures are, one per cent, at the start?

The Witness: Yes, there is one per cent.

Commr. Mitchell: All right. Do you think it would be fair for the shipper to stand the loss?

The Witness: I would say so if it is——

By Mr. Reilly:

Q. Then assuming, Mr. Dell, that the figure of the Department of Agriculture as placed in the record of 2.9 per cent breakage or damage at the time eggs are tendered to the railroad carrier——

[fol. 943] Mr. Staley: Now, I want——

Mr. Reilly: Let me finish my question, Mr. Staley, and then you can object.

By Mr. Reilly:

Q. Assuming that that is proven of record then, would you say that as to that damage the shipper should likewise bear the burden of the loss?

Mr. Staley: I object because there is no such evidence in the record. The evidence is merely through some blind checks. This business of misrepresenting what is in the record and trying to blow up a few blind checks into broken and damaged——

Mr. Knowlton: Mr. Staley, blind checks are broken eggs and we don't need to argue that here.

Commr. Mitchell: I think the record shows as I remember it—well, he is assuming it. Assuming that to be a fact, I am not sure but what there was some evidence on that.

Mr. Knowlton: They are not broken eggs.

The Witness: That is right.

Commr. Mitchel: Read the question and you answer if you can. If you cannot, say so. There is no use arguing about it.

The Witness: I am talking of Fairmont, naturally.

Commr. Mitchell: Do you understand the question?

The Witness: Yes, he wondered whether or not——

Commr. Mitchell: Assuming that the record showed by the Department of Agriculture that there was 2. what——

Mr. Reilly: 2.9 per cent approximately.

[fol 944] The Witness: Yes, considering there was no additional damage at the other end, but I claim——

Commr. Mitchell: Now, wait a minute. We are not interested in what you claim.

By Mr. Reilly:

Q. Then, in other words, Mr. Dell, you believe that if damage exists in the eggs at the time they are tendered to the rail carriers, that there should be a tolerance, the shipper should assume the obligation for the damage to the extent that it exists, is that correct?

A. Well, yes and no. There are two ways of answering that. The consignee, the trade accepts a three per cent tolerance and your best grade eggs. They accept that as being commercially sound.

Q. In other words, Mr. Dell, if you received a shipment in New York of extra—what was the type of egg, extra fancy heavy weight?

A. A-1 egg, yes.

Q. And that shipment contained three per cent damaged eggs, you would accept that shipment in good order?

A. That is right.

Mr. Reilly: Thank you, Mr. Dell.

Mr. Staley: Are there any more questions on cross examination?

Commr. Mitchell: Go ahead, Mr. Staley.

[fol. 945] Redirect examination.

By Mr. Staley:

Q. Did you ever hear of a claim being filed against a railroad because of checked eggs alone in a car?

A. No.

Q. Did you ever hear——

A. Unless it was a result of an accident of some kind. We don't ship checked eggs. They are all taken out as far as we can determine at the time they are shipped.

Q. What I want to ask is this. To your knowledge is a claim ever filed unless there are some broken eggs in the shipment indicating rough handling?

A. That is right.

Q. Never?

A. No, we won't file a claim unless there was some evidence of rough handling.

Mr. Reilly: May I ask a question for clarification?

Commr. Mitchell: Wait a minute. You are not through, are you, Mr. Staley?

Mr. Staley: Well, I am not sure. Go ahead.

Mr. Reilly: Just wanted to ask, Mr. Commissioner, if Mr. Dell were speaking for all or Fairmont Foods alone in response to the last question.

Commr. Mitchell: Well, he is speaking as a witness. I don't think you have to tie him down to who he is speaking for. He is a witness here. I do not think he has to answer [fol. 946] that question.

Is that all with this witness?

Mr. Staley: That is all.

(Respondent's Exhibit No. 58, Witness Dell, received in evidence.)

Commr. Mitchell: Thank you, Mr. Dell.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Staley: Mr. Schauert.

PAUL SCHAUERT was sworn and testified as follows:

Direct examination.

Commr. Mitchell: Would you give your name and position to the reporter, please?

The Witness: The name is Paul Schauert, Chicago, Illinois, in charge of egg operations for Swift & Company.

Mr. Staley: I have his testimony up to a certain point in writing and perhaps to save time it would be all right if the gentlemen wanted to read it and we could embody it into the record and then they could cross examine.

Commr. Mitchell. That is all right. Do you want to read it now?

Mr. Staley: You mean into the record?

Commr. Mitchell: No, unless you want to. I thought you had some other questions you wanted to ask.

Go ahead.

By Mr. Staley:

Q. State your name, address, and occupation.

[fol. 947] A. Paul Schauert, Chicago, Illinois, in charge of egg operations for Swift & Company.

Q. What is the nature of your duties in connection with such egg operations?

A. My duties cover all plants of Swift & Company at which eggs are graded and handled. This includes all operations in connection with the eggs from the time of their receipt until they leave the possession of wift & Company. I have supervision over all such egg operations.

The plants at which eggs are received, assembled, graded, packed and shipped by Swift & Company are located principally in the midwest, but some of them are in other areas. The eggs are handled, graded, and packed at each plant in the same manner.

Q. Mr. Schauert, what experience have you had in actual handling, candling, and packing eggs, and supervising the operations at processing plants?

A. My connection with the egg business started in 1909 at Seattle, Washington, where I was employed as an egg candler by the Klock Produce Company. After my stay with the Klock Produce Company for approximately three

years I accepted a job in Vancouver, British Columbia for the Vancouver Creamry Company where I followed this same job, but in addition became a supervisor. After two years I left for Sioux City, Iowa, to work for the National Bakers Egg Company where I had training in drying eggs, [fol. 948] which also entailed the supervision of the handling and breaking rooms. After the completion of this training, I left and joined Swift & Company in February, 1919, and have been employed by them continuously since.

My first experience with Swift & Company was candling and storage inspecting at Chicago. After approximately one year of this work, I was sent to the east to supervise the storing of eggs for Swift & Company at Hornell, New York, Elmira, Albany, Pittsburgh, and Buffalo. This job lasted for about three years and entailed other work, such as storage and team track inspections.

There were occasions when I was sent out to dairy and poultry plants to acquaint myself with the methods employed by Swift & Company in the general handling of shell eggs, but as the eastern storage was turned over to someone else, I then proceeded to supervise dairy and poultry plants. This supervision covered the training of egg candlers and packers. It covered the building up of basic instructions and methods to be employed for training people along these lines.

As time went on, I was finally given the overall supervision of the shell egg plants of Swift & Company throughout the United States. This also covers oil dipping, processing and storing of eggs, and the handling of the eggs by all other units of the business until they leave the possession of Swift & Company.

Q. What has your experience been in the actual candling, packing and grading of eggs since you have assumed this [fol. 949] general supervision?

A. Since I visit all plants frequently in the course of each year, at those visits I make it a point to check individual candlers and packers, and also train, if necessary, new help, or help the local supervisor train new help. This can only be accomplished by actually candling and packing by the methods being used. It must be demonstrated, and by demonstration I mean we actually candle eggs and we actually

pack eggs. We let the newcomer do the same job, and check her, and continue to do so for a few weeks until she becomes efficient.

Q. In your visits to these plants, do you candle all day long?

A. Sometimes, and sometimes not, it depends upon conditions.

Q. Do you sometimes spend several weeks time in a large unit?

A. Yes, sir.

Q. In the course of instructing others in proper methods of candling, approximately how many cases will you handle in the course of a full day?

A. I sometimes candle 10 or 15 cases of eggs personally in the course of training a supervisor. Of course, I do other things at the plant. For example, I inspect eggs handled and packed either from the stock out of the cooler, or direct from the candling room floor in varying amounts. Sometimes I inspect anywhere from 10 to 30 cases to determine if instructions are being properly followed. This inspection includes candling.

[fol. 950] Q. Will you describe the handling of the eggs at these plants from the time they are received at the plant until they are in the course of transportation from the plant?

A. Swift & Company purchases all its shell eggs intended for table use on what is known as the "graded basis." This means that eggs are paid for on the basis of quality and outside appearance, such as dirty eggs, very small eggs and checked eggs. Eggs are purchased two ways. The first way is by truck routes where our trucks visit the farmer twice and sometimes three times a week, pick up the eggs, return in the afternoon, and those eggs are candled into the various grades for quality and outside appearance. The other method is that the farmer brings in his own eggs. From that point on, eggs are handled identically the same.

Upon receipt of these eggs at the plant, they are turned over to the candling department where, under the constant supervision of an egg room foreman, the eggs are candled and graded for quality, size, cleanliness, etc. All checks, leakers, and inedible eggs are removed during this process.

The packers have been specially trained for this job. They know what grade to pack and remove by visual inspection all undesirable eggs not to be included in these grades.

New wood, fibre, or corrugated fibre cases are used, with new fillers and flats. This is a standard practice.

Q. What happens to the checked eggs and the other eggs which have been removed in the grading and packing [fol. 951] process?

A. The checks are placed in separate cases which are marked on both ends with the name "checks" which identify them, and these eggs are removed to egg breaking rooms, or trucked to our nearby egg breaking plants. All other ungraded eggs are trucked to nearby breaking plants for liquid, frozen, or dried egg purposes.

Q. In the ordinary course of transportation to the breaking plants, do the checked eggs become leakers?

A. No.

Q. Are checked or broken eggs packed in the case which has been graded at the receiving plant?

A. Never, intentionally. All of our candlers and packers are instructed and constantly supervised to see that they never pack any egg having a shell checked or damaged in any way. Our instructions to our egg room personnel does at no time permit tolerance of any description. We expect a 100 per cent candling and grading job, and the personnel strive to remove every questionable egg.

Q. What happens to the eggs after they are placed in the cases?

A. The cases are covered and nailed according to railroad specifications and placed on dollies from which they are loaded into the cars or trucks for transportation.

Q. Are all of the eggs loaded directly into the cars or trucks as soon as they have been packed?

A. No; however, when they are moved into the cooler, they are not rehandled, but remain on the same dolly until [fol. 952] eventually they are placed in the car or truck.

Q. Describe how the handling and loading operations are supervised?

A. Each plant has a superintendent. In our smaller plants the superintendent supervises these operations personally; in larger plants we have experienced loading fore-

men. In either case the loading operations are closely supervised by an experienced loading supervisor.

Q. How are the eggs loaded in the car?

A. The accepted practice is to measure as to the width and length of the interior of the car by placing one row crosswise from wall to wall, and another row lengthwise from bunker to bunker, thereby establishing the exact count of cases the particular car can accommodate. This measuring makes it possible for the supervisor to figure the amount of bracing necessary at the bunker as well as the center of the load. Each row of cases is packed tightly until the loads at both ends have reached the center of the car where the necessary number of wooden bracings is used to keep the load from shifting.

Q. I believe several kinds of bracing are in common use, why does Swift & Company use wood bracings?

A. Based on our experience of many, many years ago, we found that wood bracing permits a tight load which is extremely difficult to secure with other materials, such as [fol. 953] straw, and furthermore, Swift & Company, in cooperation with the W stern Weighing & Inspection Bureau, made exhaustive tests along this line some twenty-five years ago and both organizations agreed that this was a fine type of bracing. This was the principal type of bracing on eggs from the great Petaluma, California, processing area to the eastern seaboard, a distance of 3000 miles.

Q. Do you know of any better material than wood to use for bracing egg shipments?

A. No, I do not.

Q. What has been the experience of Swift & Company with respect to the effectiveness of the wood bracing?

A. Our experience has been that in normal transportation the eggs arrive at destination without damage. For example, for 25 years prior to 1942, our damage claims were practically negligible. In 1941 the average claim was only $3.00 per car shipped, and this was higher than the Swift & Company average. Invariably during our inspection at destination that results in a damage claim, it is clearly shown that there was some type of rough handling in transit, either by damage to the cases, or the bracing, or both.

Q. Then, you have testified, Mr. Schauert, with respect

to the way eggs are candled and packed and shipped at the plants of Swift & Company at which eggs are received and the care with which those operations are performed. Now, do you have any knowledge as to whether in the plants of your competitors the same care is exercised in removing [fol. 954] all checked or otherwise defective eggs?

A. Yes.

Q. And do you have any knowledge as to whether in the plants of those competitors the same care is exercised in the packing and the shipping?

A. That is right.

Q. How did you obtain that knowledge?

A. Well, we check plants, I mean we visit back and forth once in a while. We do it every year here and there. We discuss problems. We check egg grading, they check ours. In the course of our conversations we get an idea of how they are doing it. It is about the same.

Q. What competitors plants have you visited in that manner?

A. Well, Peterson-Biddick. I do not believe they are here, in Minnesota. We visit with them. They are competitors, and Butterfield in Iowa.

Commr. Mitchell: What about Wilson & Company?

The Witness: I have never been in Wilson & Company's plant, sir.

Commr. Mitchell: What about Armour & Company?

The Witness: Yes, in Armour & Company in the old Creston plant years ago, but I can't say much about the plant. I haven't been there for years.

Commr. Mitchell: In Creston, Iowa?

[fol. 955] The Witness: Yes, sir. I am trying to figure a plant around Spencer, Hakes.

Commr. Mitchell: What about Strawberry Point over there? Have you ever been at that plant?

The Witness: No, I have never been to Strawberry Point yet. Atlantic, Iowa.

Commr. Mitchell: Well, that is a Swift Plant.

The Witness: Now, it is, yes. It used to be Mr. Jeck.

Commr. Mitchell: Yes. Have you ever visited his son's plant at Superior Lake?

The Witness: I didn't. They were drying eggs there and I don't handle drying. I know them, however.

By Mr. Staley:

Q. Well, in your visits at those plants did you find that the same care is exercised there as in the Swift plants to remove all checked or otherwise defective eggs?

A. That is right, they have to.

Q. And that the eggs are graded as carefully and in the same manner as they are at the Swift plants?

A. Yes, sir.

Q. When a car containing damaged eggs arrives at destination, can you tell whether the breakage occurred in the course of transportation or not?

A. Yes, railroad damage has definite earmarks. Any person dealing with eggs will learn or know about it. Can I use a filler here as a demonstration?

[fol. 956] Commr. Mitchell: Sure.

The Witness: If this represents a case of eggs lengthwise (indicating), this would be an end, and this would be an end. The damage would be here or here. The damage is always in this area here (indicating) and the eggs are damaged in a way that they split horizontal at all times in railroad damage, which differs entirely from a check as we know a checked egg. A checked egg is a totally different thing. It is checked and of course it is damaged, but there is a distinct difference between a checked egg and railroad damage to the egg.

By Mr. Staley:

Q. Where a car has been handled roughly enough to break eggs, make leakers out of them, doesn't it also cause additional checks?

A. Oh definitely, certainly.

Q. Over the years, have the specific classifications of the separate grades of eggs packed by Swift & Company changed?

A. You mean the grade specifications?

Q. Yes, sir.

A. Grades and weights?

Q. That is right.

A. They have not. They have been in existence since 1924 or 1925.

Q. What grade does Swift & Company ship into New York, chiefly?

A. Well, our chief outlet in New York, of course, is chain stores, and they take a Grade A large egg, that is [fol. 957] just large and that is all there is to it. It ranges from 23 to 28 ounces per dozen, 23 minimum, 28 being maximum, per dozen.

Q. And haven't we shipped eggs of that same grade and size into New York for the last 25 years?

A. Oh, yes.

Q. And are those eggs as large as the eggs which were used in the demonstration by Mr. Jensen in demonstrating the new larger flat and filler?

A. Well, I would like to clarify the point of large here. I think there is a—using my own thinking here—the egg has increased in size out in the country. In other words, hens lay larger eggs, but the grades, Grade A or Grade B, whatever we put up, is based upon the same quality and weight specifications as we did twenty years ago, so there is no change in the original case weight or size. Where we have more larger eggs, of course, they are packed separately. Jumbo eggs are packed separately.

Commr. Mitchell: Now you say that the weight of a case of eggs hasn't increased?

The Witness: No, sir, I would say so. I would say that the average net weight of eggs alone is 46 pounds. Forty-five is minimum.

Commr. Mitchell: You mean when you say 45 or 46 pounds, that is the shipping weight, is it?

The Witness: That is the net weight of the eggs, sir, [fol. 958] without the cases and flats. The case would weigh 57, 58 pounds with the case and fillers and flats.

Q. Is that the actual weight or is that a weight that is accepted for shipment.

A. I am using the actual weights except the railroad weight I think is 53 and ½ isn't it?

Mr. Knowlton: Fifty-three pounds is the estimated weight.

Commr. Mitchell: Fifty-three pounds?

The Witness: The estimated weight, sir, yes, sir.

By Mr. Staley:

Q. Is that for the large eggs?

A. That is for all eggs as I know.

Q. All eggs. Now, Mr. Jensen in the course of his demonstration stated that in the case of an ordinary damaged car the eggs along one end of the case would be damaged and he stated that was due to the fact that the eggs are too large for the fillers or the fillers too small for the eggs, is that true?

A. Well, that can be true if you put jumbo eggs into the filler, of course it is true.

Q. Is it true in the case of large eggs?

A. Well, it is the same large egg we are packing this year as packed ten years ago. I mean the same size is involved.

Q. And does damage of the same kind occur where the eggs are mediums instead of large?

A. The damage could very easily occur, yes, if the car gets enough of a bump.

[fol. 959] Q. That is, isn't that a characteristic of damage in a damaged car of eggs, that regardless of the size of the eggs you will find them broken along the ends of the cases?

A. That is right. Now, I would like to just mention on the jumbo egg which is not shipped—I do not think we ship jumbo eggs by rail we don't get enough of them. I would say, however in the jumbo size, that is the 29 ounce per dozen on up, if they were packed that way, I would say damage would result from the package alone, but we don't pack them that way; I mean we don't ship them because we don't get enough of them to ship. Incidentally, when we ship jumbos—I might mention here—if and when we ship jumbos, they are packed 20 dozen to the case; they are not packed thirty dozen to the case. Swift's don't

Commr. Mitchell: Well, is the filler that you use, Swift uses, always big enough to get the egg in?

The Witness: The normal egg, sir, is large enough—of course, if I were to get an order for extra large then this filler would be slightly too small I think.

Commr. Mitchell: Well, you wouldn't use this filler, would you? I am talking about Swift & Company.

The Witness: Yes, sir. You have no other choice, you have no other filler.

Commr. Mitchell: Then you do use fillers that are too small for the big eggs?

The Witness: For the large eggs, yes, sir. I would say so.

[fol. 960] By Mr. Staley:

Q. Can you demonstrate with one of the fillers there how you go about putting jumbo eggs in it?

A. Yes, I think I can.

Mr. Staley: Can we borrow some of those glass eggs?

The Witness: I think we can do it right here. We take three in here, (indicating) and three and three and three and six over here. We get 25 eggs here. That is to relieve the pressure of the large eggs. We permit the diagonal line to be vacant. I don't think anyone packs jumbo eggs as thirty dozen to the case. I don't think it is done. At least we don't do it.

Was that diagonal clear?

Q. So that even with the jumbo eggs you are able to pack them in a case so they will carry through in transportation?

A. Yes, I think that is right.

Q. Referring to the so-called trays demonstrated by Mr. Jensen, has Swift & Company ever used those?

A. Yes, sir, we used those trays—I am not sure about the year here, but it is every bit before the war—I would say ten years ago, eleven years ago. We used quite a lot of them and they were not accepted by the eastern trade nor by the farmer, not because the package isn't any good, but because it changes the whole picture in the industry. In other words, here we use six units for half a case where we now use five. The eastern seaboard people, our trade,

didn't like them, and the farmer out in the country doesn't [fol. 961] like them because he has the reverse. He isn't particularly anxious to say, "Well now, I am going to complicate this thing and I am going to put 20 eggs this way and 5 eggs this way and I have to alternate each filler which I have to do." We just weren't successful with it so we gave it up.

Q. Is that filler used throughout Kansas?

A. Yes, through Eastern Kansas it is used exclusively, I think, but Western Kansas uses the ordinary filler as a rule. Now, for export they may all use the trays as you call them now.

Q. Do you know if the trays require different kinds of machinery for processing eggs in plants where eggs are oil dip?

A. Yes, sir, if we were to change into this flat here, this new tray, we would have to change our whole oil processing system. That would mean that—I am saying that because during the war I went to Kansas to help them out. We tried to get a machine that would take care of these flats, these trays, for oil processing. Well, we weren't very successful because our machines don't do the work and we would have to change—well, we have probably 75 of those machines. They cost a thousand dollars a piece. We would have to change our whole system. There is a labor problem involved. In other words, the removal of those eggs from the farmer would be a hand operation where now it isn't, at least only partially so.

Q. Don't those trays require wooden cases, now?

[fol. 962] A. Now, when we packed them we used wooden cases, but they could be used in fiber any time, I am sure of that, fiber or corrugated fiber.

Q. Mr. Schauert, have you prepared instructions for use in training egg candlers and packers?

A. Part of my job is to build up instructions every years, any changes.

Q. Have you built up an instruction consisting of a record with a voice recording on it?

A. Yes, sir.

Q. To be used in connection with some pictures showing how the eggs should be properly candled?

A. Yes, sir.

Q. Do you have that present?

A. I have it here.

Q. Can we put the picture on and have the recording copied in to the record?

A. Yes, sir.

Mr. Staley: Mr. Commissioner, I would like to do that. I think this will be very instuctive to all parties concerned. It covers the matter of candling eggs.

The Witness: It shows the whole operation os how we train people, what they should do, what they should avoid, particularly about checks.

Commr. Mitchell: Do you think it is material to this investigation?

[fol. 963] Mr. Staley: Yes, sir, I think it is very material because he has testified in here as to the instructions, how he supervises and instructs the candlers to remove these checked eggs and the defective eggs.

Commr. Mitchell: Well, that is all we are interested in, isn't it? He has already testified to that, hasn't he?

Mr. Staley: Well, he has so testified. However, I think the manner in which these employees are actually instructed is very material evidence.

Mr. Canny: What would he say over and above what he said already on the record?

Mr. Knowlton: I don't know how he can add anything that the Commission can use in a decision inasmuch as they don't put them out on a machine that he cannot do orally and has done already orally. I would object to it.

Mr. Staley: Well, if you want to admit that we supervise in that manner, the employees are told to do that and they actually do that and they don't put this——

Mr. Knowlton. The picture would not prove that. The picture would not prove it and neither would the instructions prove that they actually do it.

Mr. Staley: The picture would be evidence which is very persuasive——

Commr. Mitchell: This man has testified to that though, has he not?

[fol. 964] Mr. Staley: He has testified that he has instructed——

Commr. Mitchell: What?

Mr. Staley: He has testified that he has given instructions to the employees and I want to offer the instructions in the record.

Commr. Mitchell: Well, you can make a copy of the record and it will be admitted into the record as part of this man's testimony.

Mr. Staley: Without showing it——

Commr. Mitchell: I can't see the sense in taking twenty minutes just to listen to the voice, can you?

Mr. Knowlton: Not when the voice is on the stand.

Mr. Staley: Except it is on a matter which has become pretty material here. The railroads——

Commr. Mitchell: I am now permitting you to make a copy of whatever is on this record and admit it here. I take it that this witness has testified to all this. The mere fact that we would listen to his voice wouldn't add anything, would it?

Mr. Staley: Well, listening to his voice in connection with the movie I think might——

Commr. Mitchell: Who is going to see it down in the Commission that is going to have anything to do with this case? I would be the only one.

Mr. Staley: That is right, we are trying to persuade you.

Commr. Mitchell: Well, you can prepare a copy of what-[fol. 965] ever instructions he gives on this record. We will admit it in the record.

The Witness: I just want to mention in connection with this record here, it is a method of training people to do a job a certain way. It is not exactly instructions like we understand them. When we send out instructions, we say to the plant, "All right, you do so and so, you do so and so." This is a matter where we get all the girls together and the picture is shown, and we follow that thing through. I just want it clarified. It is a training film, is what it is. We train people. We used it during the war.

Mr. Staley: With that explanation I would like leave, then, to file copies of the recording within ten days.

Commr. Mitchell: It will be granted. You will furnish a copy to the other interested parties.

Mr. Staley: Yes, sir, I will furnish copies to all parties.

By Mr. Staley:

Q. Mr. Schauert, are you able to state from your own personal observation whether or not those instructions are carried out by the employees?

A. Well, I am a human being, after all. When you ask me that question, of course, the thing is that I supervise the plants. I stay one day, three days, sometimes two weeks, and we follow through to see that the supervisors of the egg room or the superintendent or the girls in question follow through with the job. That is the best we can do. I think that is reasonable. But we do see it. It is [fol. 966] done every day. I mean the supervision goes on every day. It can't help itself.

Mr. Staley: That is all.

Commr. Mitchell: Cross examination.

Cross-examination.

By Mr. Knowlton:

Q. Mr. Schauert, why do you take checks out in your business?

A. One real reason is that we purchase eggs on a graded basis. In other words, as it is in the testimony here, we pay for the eggs for the quality, for the size as we get it, so that the farmer will receive a premim for high grade quality eggs and will receive a diminishing value for the lower grade eggs which includes checks so we remove them.

Q. Do you know why checks are taken out then?

A. We don't want them. We do not want to pack them.

Q. Why don't you want them?

A. They have no particular value.

Q. Are they weaker in shell structure?

A. Yes, naturally.

Q. They are defective, aren't they?

A. Yes.

Q. You mentioned in your testimony that you nail the crates. Do I take it from that you use all wood?

A. Oh no, not necessarily. We use both wood fiber and corrugated fiber.

[fol. 967] Q. Do you ship to Garden City?

A. Garden City, New York?

Q. Long Island?

A. I think we do if it is the A & P Tea Company, we do yes, sir.

Q. Did you make one of these trial shipments with a rubber sponge protection?

A. No, I didn't myself. I don't know that I—no, I did not.

Q. Did you ship some of these eggs in the trays to Garden City?

A. You mean in these trays, (indicating)?

Q. In that type of trays?

A. No, I do not know a thing about them. You are apparently referring to a test of some sort.

Q. No, you said you shipped in trays about ten years ago?

A. About ten years ago. Oh, yes, we did, yes.

Q. And they were the ones that said they didn't want them or——

A. No, wait a minute. I wasn't specific and I cannot be specific now because the general trade reaction was poor, generally speaking.

Q. Now you said the big shippers as I understand it were the chain stores, the big receivers?

A. That is today. It was not in those days. We are shipping today to chain stores. That business has changed. In those days we shipped to maybe fifteen or twenty people.

Q. Then maybe you could ship today to the chain stores who are big shippers that you could deal with directly and [fol. 968] make arrangements, couldn't you?

A. Sure you could.

Q. In trays?

A. Yes.

Q. And how do they handle the trays in Canada, don't they have machines that will pick up 30 eggs instead of 36?

A. I think they have, yes, sir.

Q. And it just means a modification of the number of fingers or suctions or whatever the machine is?

A. That is true, a modification would be extremely expensive to us.

Q. Well it would be just a modification of the handling end of that equipment wouldn't it?

A. Oh no, you would have to change the whole equipment, not a modification. You would have to rebuild the equipment.

Q. You could use the same basic machines?

A. No, sir, you could not.

Q. What type of machinery do you have?

A. Well, we use Car-Prows.

Q. And it has fingers?

A. No, sir.

Q. What did you say before that. Did you say—what I am getting at is the fingers or suction——

A. There are five braids. There is a bale and as you pull the bale over those braids become perpendicular. As they [fol. 969] become perpendicular you throw the five eggs out, you let the bale come back and you pick up three dozen eggs. It would be utterly impossible. They cost $7.50 apiece. It would be utterly impossible to change. You would have to rebuild the equipment. Modification is quite different.

Q. Do you have damage to tall eggs?

A. Pardon me?

Q. Do you have damage when you ship a tall egg?

A. Elongated egg, yes.

Q. Yes?

A. Yes, sir.

Q. And that egg might be in a weight class of one of the smaller eggs, might it?

A. It might but it shouldn't, human error.

Q. Well it comes under large eggs, don't they, tall eggs?

A. Yes, but our instructions call for not to put elongated eggs into the filler.

Q. Don't you have longer eggs and shorter eggs in all the weight classes?

A. Yes, but, of course, we are pretty uniform. We range from 23 to 28 ounces.

Q. Well, I am not talking about the weight classes as such. We know what those are.

A. I know but weight——

Q. But within that class you will have some eggs that are [fol. 970] tall and some that are chunky, wouldn't you?

A. It could be, yes.

Q. Well, don't you actually?

A. Yes.

Q. Yes. Now, what is the type of breakage on a tall egg. You have given the type of breakage at the end of the crate.

A. Crowned eggs, as we call crowned eggs. They had been on top.

Q. Crowned. And then the filler that you use, if there would be a jar from above or somebody walking over the crates after they get in the car, some accident that shouldn't happen, that tall egg becomes a leaker, doesn't it? It might?

A. It might, yes, not necessarily so.

Q. And do you have the experience of those leakers softening the bottom of the filler so that they go through so that you have sunken damage?

A. You are speaking of sunken damage. What you are referring to is a flat?

Q. Yes.

A. Where the egg has gone through?

Q. Yes.

A. I don't think a leaker would do that. As a matter of fact, I know it would not.

Q. Would it soften the bottom of the filler?

A. That depends. That depends how bad the leakage is [fol. 971] of the egg, of course, it could, conceivably.

Q. Now, in the present day filler and the flat you were talking about the eggs sometimes not being the large eggs. If that is so, those eggs would be loose in there, wouldn't they, and rattle around?

A. Yes, if they are too small.

Q. And that might be the cause of damage, might it not?

A. Yes, it could. The only trouble is we do not ship those real small eggs.

Q. When we take the position that the large eggs are typical, do you agree with that?

Commr. Mitchell: Let us ask the questions here rather than make statements.

By Mr. Knowlton:

Q. I will say, do you agree with our contention that the large eggs are typical of what is being shipped?

A. The large Grade A egg is typical, yes. The majority, that is what you are asking, the majority of eggs being shipped?

A. Yes.

A. I think that is right, yes, sir.

Mr. Knowlton: That is all.

By Mr. McDonald:

Q. Mr. Schauert, at the time Swift used the tray type of packaging assistance, you say that you gave that up because the trade agency didn't like it, is that so?

A. That is right.

Q. Do you recall what your actual claim experience was? [fol. 972] Was there any difference claimwise in shipments made in that manner versus shipments made in the ordinary manner?

A. No, my recollection is not clear enough to make a statement.

Q. You don't remember?

A. No, but I did mention that the pack is a rather good pack in itself.

Q. Sir?

A. I made the statement I say that the pack is a rather good pack in itself.

Q. But you don't recall what your actual claim experience was?

A. No, I don't.

Mr. McDonald: That is all.

Redirect examination.

By Mr. Staley:

Q. Mr. Schauert, also mentioned here by Mr. Jensen was a carton which holds one dozen eggs. Is that a wholesale or retail packing?

A. Oh, it is a retail problem decidedly. It is not a wholesale problem.

Q. Do we ship eggs in those containers?

A. Yes, quite a few of them.

Q. Are they more or less expensive than flats and fillers?

A. More.

Q. More expensive?

A. Yes, sir.

Q. And if damage occurred would there be more labor in [fol. 973] reconditioning damaged cases?

A. Yes, because these cartons are glued with a special g-ue and if you should have to recondition a case you would have to tear those cartons apart. You cannot save them—I am speaking from personal experience here. We had damaged eggs in New Orleans and we spoiled every carton. You can't just pull it apart. It is just impossible to pull the glue apart.

Q. Are those practical for use in the wholesale or hotel trade?

A. No, a hotel wouldn't want to spend money for a carton, what for, and neither would a restaurant. Those eggs that we ship go to retail channels.

Q. What do our instructions, if any, say with respect to tall eggs?

A. Well, I have to quote. I may not use the same terms, but any egg—I am trying to fish for words here, in other words, an elongated egg that goes over the top of the filler, over the rim of the filler, should not be included. We dislike and the trade dislikes to use an elongated egg which is, first of all, too large for the filler, I mean too high for the filler, and the trade doesn't like it because if a wholesaler sells it to a dealer who in turn turns his eggs over to a retailer and puts them in a carton, they will be damaged. Of course they will be. We don't want damaged eggs and it

automatically becomes damaged if you handle them more often. We know that.

Q. Did you ever hear of a claim being filed by Swift & [fol. 974] Company where the only damage was checked eggs?

A. No, sir. It isn't a practice to do that. You see, maybe I am a little bit—we use the term damage. Sure an egg is damaged when it is checked, but in our parlance, and I think some other egg people here will bear me out, when you use the term damage we immediately think of leakers, eggs that have spilled all over, some of them completely gone, but you meant checks, just checks only. In other words, we get a car of eggs with checks in them at the other end.

Q. Yes.

A. We do not file a claim for it because there is no necessity for it. They are acceptable to the Mercantile Exchange. They are acceptable to anyone. Does that answer your question?

Q. That is right. Mr. Schauert, you have heard some reference made in some questions by the railroad attorneys concerning damage which has been found in the course of United States Department of Agriculture inspections in cases of eggs at origin?

A. Damage or checks, now.

Q. Well, it was referred to by the railroad attorneys as damaged and they state that the figures showed about 3 per cent.

A. Now, wait a minute. I assume those are checked eggs, not damaged eggs in the line of leakers or anything like that.

Q. Why do you assume that?

A. Well we don't pack them. You cannot pack a thing like that. It is not done, it isn't logical. If I am right to [fol. 975] say that 3 per cent checks can be found at points of origin in a graded egg, those are blind checks. They are not leakers, they are not eggs that leak all over the filler, you can't pack eggs like that. It just isn't done. It could not be helped.

Q. Well, does that arise from the fact that in the process of grading and packing every checked and broken egg is removed?

A. Yes, we have to have means of checking that.

Q. Do those blind checks that you referred to carry through to destinations in the ordinary course of normal transportation?

A. Yes, sir.

Q. And are they acceptable to purchasers in the egg trade?

A. Yes, sir. The Mercantile Exchange. They are acceptable anywhere.

Q. Do they cause the shipper or receiver or anyone else any damage where the shipment arrives at destination in good shape?

A. No, he accepts the car and pays us for the car as the car was sold. If the car was sold for 50 cents a dozen and he accepts the car, he accepts it, that is all there is to it. He may find three per cent checks in it. He still accepts it.

Mr. Staley: That is all.

Mr. Zearfaus: May I ask a question, Mr. Commissioner, in view of this redirect examination?

Commr. Mitchell: Go ahead.

Recross-examination.

By Mr. Zearfaus:

Q. You said that a checked egg would be accepted and [fol. 976] I presume it would be accepted by the consignee at destination?

A. That is right.

Q. Who does the inspection for your company at destination, particularly at New York City?

A. Our own people.

Q. Your own people?

A. Yes.

Q. And you sell to a great extent you say to the chain stores?

A. Yes.

Q. And they take these checked eggs without any complaint or murmur?

A. You switched me off the track a little bit. If you don't mind I will go back to this chain store stuff. Those eggs are packed out in the country for the chain store. They don't

clear through the branch house. That is New York. In other words, we get an order from the A & P Tea Company and those eggs are put up in Iowa, Minnesota, whatever it might be. That car of eggs ships, and assuming that the A & P Tea Company makes an inspection immediately upon arrival——

Q. Then you don't inspect them. That is the A & P?

A. Not for the A & P Tea Company, no. You said Swift & Company.

Q. I asked you who made it.

A. In Swift & Company we make our own.

Q. Who makes the inspection at the destination, the rail [fol. 977] destination. In some cases where you are the consignee you make the inspection, is that right?

A. Yes, sir, that is right.

Q. And where someone else is named as the consignee that someone else makes the inspection?

A. That is correct, sir. Yes, sir.

Q. And does the practice with respect to that someone else and yourself differ with respect to the acceptance of checked eggs?

A. No, sir.

Q. You take the A & P Company now, for example, as one of the someone elses?

A. That is right.

Q. They will accept checked eggs?

A. They will accept a certain percentage of checks eggs in the grade that they purchased, yes, sir.

Q. Don't they take every checked egg out when they make the inspection?

A. No, sir.

Q. And candle them?

A. Now, wait a minute. We are jumping again.

Q. I am not jumping.

A. Pardon me, I shouldn't have said that, but here, supposing we spot a car at the A & P Tea Company at their warehouse, they remove ten or fifteen cases immediately. [fol. 978] They make an inspection. If that inspection comes up to the specifications of the A & P Tea Company and this inspection shows three per cent checks, they accept the carload, pay us the money for it and this carload is run through

their candling room to be candled for their own stores, into cartons, A Grade, B Grade, C Grade, what have you.

Q. Then if it is over three per cent there are checks they will not accept?

A. Well, I used the term three per cent. It can be higher even.

Q. Do you know what it is?

A. Well, I assume if it is over five per cent I imagine they would kick about it, yes.

Q. Now, when you say three per cent or five per cent checks, if there are other damaged eggs in there, leakers and so forth, would they reject not only the three per cent check but also the others?

A. Well, again assuming that this car is spotted and we are finding railroad damage, is that what you mean, we are finding damage, leakers?

Q. Finding damage. I am not saying who is responsible for the damage.

A. No, neither have I. The point is that usually a twenty case inspection is made for damage. Supposing they find leakers in two or three cases of these twenty, the chances are they will raise the covers and see how extensive that damage is.

[fol. 979] Q. But you will include the leakers along with the other eggs in determining whether or not the shipment will be accepted as a good order shipment, wouldn't you?

A. We never include leakers, that is impossible.

Q. I don't mean leakers, I mean checks.

A. We don't include checks, no.

Q. Not at all, even though there may be other breakage in there——

A. We never include checks knowingly.

Q. I am speaking when the shipment arrives at destination and the consignee is determining whether or not he will accept the shipment as a good order shipment or whether he will accept it as a damaged shipment. Now, when that problem is presented to the consignee—let us take the A & P Company.

A. Yes.

Q. Wouldn't they include in their investigation or inspection the number of checked eggs along with any other

broken eggs and determine whether or not that would be a good order shipment or not?

A. Oh, I think they would, yes.

Q. So then after all the checked eggs do enter into the damage picture, don't they?

A. Oh, into the damage picture, certainly, of course, they do.

Q. That would be not only with respect to the A & P but likewise with your own company?

[fol. 980] A. Sure.

Q. Do you say that the A & P eggs are loaded at country points and then shipped directly to the A & P?

A. Yes.

Q. Who inspects those eggs at rail point of origin.

Q. Well, again let me say it this way. We inspect them.

Commr. Mitchell: Well, they are all loaded at Swift plants aren't they throughout the country?

A. We inspect them.

Mr. Zearfaus: I thought he said, Mr. Commissioner, that they weren't loaded at Swift's plants. Did I misunderstand you?

The Witness: Yes, you did.

By Mr. Zearfaus:

Q. You told me that the A & P eggs as I recall it were taken directly from the country points and shipped to the A & P.

Commr. Mitchell: That is where Swift has their plants.

By Mr. Zearfaus:

Q. Oh, you mean the packing plants?

A. Oh, yes, the packing plants, Iowa, Minnesota.

Q. Do you know what inspection the A & P makes at destinations and what they include in a claim?

A. No, I don't know what they include in a claim. They make an inspection against us, a quality inspection, usually consisting of ten, fifteen, or maybe twenty cases, quality. They are only interested in getting value for their money which they have to pay us. Now then, if this inspection [fol. 981] shows that the quality egg, si-e, appearance, and

everything is up to their specifications, the car is accepted, and that car may contain four per cent checks.

Q. That car is all right as far as you are concerned, but whether or not it is acceptable, you wouldn't know?

A. Oh, yes, we would. We would. A & P could let us know immediately if there is railroad damage.

Commr. Mitchell: Is there further cross examination?

Mr. McDonald: Yes, sir.

By Mr. McDonald:

Q. Mr. Schauert, I am not clear what you mean by the last explanation you attempted to make there when you spoke of a car that might contain as much as four per cent checked eggs.

A. It could.

Q. Which the A & P would accept, as I understand, as far as Swift & Company is concerned, is that what you said?

A. That is right.

Q. Now, if they accepted that car as a good order car so far as Swift is concerned and full compliance with its order, where does railroad damage enter into it as far as your company it concerned?

A. It doesn't at all.

Q. It does not, despite the fact——

A. It does not with the A & P Company either.

Q. Despite the fact that there would be four per cent [fol. 982] checks in that schipment?

A. Just checks now, no leakers.

Mr. McDonald: All right, that is all I wanted, thank you.

Commr. Mitchell: As I understand you—there is a lot of confusion here—Swift & Company doesn't knowingly put any checks in the car, do they?

The Witness: That is correct, sir. That is right.

Commr. Mitchell: Nor leaker or any other defective eggs?

The Witness: That is right.

Commr. Mitchell: And when you talk about four per cent, if it should happen that there were blind checks when they reach the termination at destination, they will accept up to three or four per cent on these checks?

The Witness: Providing the rest of the car is up to——

Commr. Mitchell: Providing the rest of the car is in good condition?

The Witness: That is right. It is a trade acceptance all the way through.

Commr. Mitchell: I think it is very clear now. I don't know why we should have any more confusion about it.

Redirect examination.

By Mr. Staley:

Q. Where the A & P thinks there is railroad damage, do they bill against Swift for that damage and does Swift file a claim for that carrier?

A. I cannot say how that is handled. I am not in the [fol. 983] transportation end. I know we know about it. They let us know that there is damage.

Mr. Staley: That is all.

Commr. Mitchell: Any more questions?

By Mr. Blanchard:

Q. Mr. Schauert, the proportion of checks which a buyer will accept depends to some extent upon the grade of eggs he bought, doesn't it, and you had sold him?

A. No, I would not say that.

Q. Aren't there some government grades of eggs that permit a greater percentage of acceptance than the higher grades?

A. Yes, government grades, yes.

Q. Then, if a man bought from you the carload of the lower grade eggs he would accept a greater percentage of eggs than he would if he bought the higher grade of eggs?

A. He would, yes.

Mr. Blanchard: That is all.

Commr. Mitchell: That is all, thank you.

(Witness excused.)

Mr. Blanchard: Mr. Commissioner, we have here Mr. V. S. Almquist who holds the identical position with Armour that Mr. Schauert does with Swift. That is, he is assistant head of the department, his superior being on vacation. Mr.

Almquist if called and asked the same questions as contained in Mr. Schauert's written testimony and his oral examination in direct and cross would give the same answers [fol. 984] as to Armour and Company's business as Mr. Schauert has given as to Swift & Company's business. He would also give the same answers as to the customs and practices of the trade. In view of that fact we can save perhaps twenty or twenty-five minutes if the carrier's would stipulate that Mr. Almquist, if called, would answer the questions on direct and cross with reference to Armour's business exactly as the previous witness answered them as to Swift & Company's business.

Commr. Mitchell: Do the railroads have any objection to stipulating this into the record?

Mr. Blanchard: Or Mr. Almquist will take the stand for any further cross examination on that testimony if the carriers wish.

Mr. Canny: Has he visited all these other plants too?

Mr. Blanchard: Yes he has and he is familiar generally with the practice of the trade. His title by the way is assistant head of the procurement division, poultry and eggs, to Armour & Company. His immediate superior is on vacation and in his absence Mr. Almquist is in entire charge of the department.

Mr. Reilly: I think the railroads are agreed, Mr. Commissioner, we will accept Mr. Almquist's direct testimony as being identical with Mr. Schauert, but we would like to ask him a few questions as to the plants he visited.

Mr. Blanchard: Very well, will you take the stand, Mr. Almquist and be sworn?

Commr. Mitchell: Well, if you limit it to plants, but I can't see why there is any good reason for going into all [fol. 985] this other testimony that this other witness testified very frankly and openly about. The record is clear on it and it would be just simply to waste time.

Mr. Blanchard: Mr. Almquist has read the typewritten statement which is given to the railroads and he has heard every word.

Commr. Mitchell: We will swear him in.

V. S. ALMQUIST was sworn and testified as follows:

Cross-examination.

By Mr. Reilly:

Q. What plants did you visit, Mr. Almquist and when?
A. You mean other than Armour & Company?
Q. Other than Armour & Company.
A. Well, I visited quite frequently with Peterson-Biddick Houses in Minnesota, North Dakota, Fairmont Creameries, in Moorehead, Minnesota, Red River Produce at Grand Forks, North Dakota, Mandan Creamery and Produce, Mandan, North Dakota, Swift & Company plants at various places, Creston, Iowa is one.
Q. How many times did you go to Creston, Iowa?
A. Through the years quite frequently. I would say probably five times in all.
Q. When did you last visit Creston, Iowa?
A. Approximately four years ago.
Q. And when was the last time you visited the Fairmont Food?
[fol. 986] A. Fairmont in Moorhead, Minnesota was not quite three years ago.
Q. Did you observe all the operations at the time you were there?
A. That is right.
Q. How much time did you spend?
A. Oh, approximately two or three hours at a visit.
Q. And how many times did you visit the Peterson Biddick plant in Minnesota?
A. They have several plants in all. I visited them probably a dozen times.
Q. And did you observe all the operations when you were there?
A. Yes, sir.
Q. And how long a time you spend in each plant?
A. That would vary from an hour to practically all day.
Q. And when was the last time you were there?
A. Approximately three years ago.
Q. Did you visit the plant of Butterfield in Iowa?
A. No.

Q. Have you made any inspections or any visits to any plants other than Armour within the last three years to observe their operations?

A. Yes, sir, GLF plants in New York State, cooperative plants in Pennsylvania.

Q. Does GLF pack and ship eggs?

[fol. 987] A. Yes, sir.

Q. They do, to stores, retail?

A. That is right. They are a cooperative concern.

Q. Do they ship by rail or do they ship by their own motor truck, do you know?

A. I can't answer that a hundred per cent, but I would say largely it is truck.

Mr. Reilly: That is all. Thank you very much.

Redirect examination.

By Mr. Blanchard:

Q. What other plant besides Creston by Armour & Company are maintained in Iowa?

A. Coon Rapids, Sheldon, Gowrie, Osceola. That is all at the present time.

Q. You have regularly visited those plants, have you?

A. Yes, sir.

Q. And the testimony as to the operations there include all of those plants?

A. Right.

Commr. Mitchell: Is that all the plants they have in Iowa, just four now?

The Witness: Armour only has four plants. Sheldon, Coon Rapids, Gowrie, Osceola.

Commr. Mitchell: That is all.

(Witness excused.)

Mr. Blanchard: I will now call Mr. Swanson.

[fol. 988] HERBERT C. SWANSON was sworn and testified as follows:

Direct examination.

By Mr. Blanchard:

Q. Will you give your name to the reporter, Mr. Swanson?

A. Herbert C. Swanson.

Q. And you have been sworn?

A. Yes.

Commr. Mitchell: Yes, he has.

By Mr. Blanchard:

Q. By whom are you employed, Mr. Swanson?

A. I am employed by Armour & Company. I am head of their egg sales department.

Q. Egg sales department?

A. That is right.

Q. And how long have you held that position?

A. Thirteen years.

Q. And as such, as head of that department you are stationed where?

A. In Chicago.

Q. Did you, or do you not in the course of your duties make inspection tours in the area where Armour sells eggs all throughout the United States?

A. Yes, at intervals.

Q. It has been shown in the record in this case already, Mr. Swanson, that in the year 1948 Armour & Company shipped to what we railroad people know as eastern trunk [fol. 989] line and New England territory, which means the territory east of Buffalo, Pittsburgh and north of the Ohio Potomac, 332 carloads of eggs in 1948 and 124 carloads of eggs during the first nine month of 1949. Did you, at my request, make a study of the shipments made during the same intervals to other portions of the United States so that you will be able to state what proportion of Armour's total egg shipments are reflected by the information already of record?

A. Yes, sir.

Q. What is that ratio?

A. The ratio in percentage, 1948 in that particular area stated—pardon me, in the area other than that particular area?

Q. Yes.

A. Would represent about 55 to 60 per cent, and 1949 it would represent about 45 to 50 per cent.

Q. That is, the eastern territory being 50 per cent or higher?

A. That is right.

Q. In each case. Now, based upon your knowledge in the thirteen years would there be any great fluctuation and if so, how much in the distribution of eggs throughout the United States for the past ten years, considering the ratios, one territory to others?

A. Well, I don't quite understand the question.

Q. Your questions have applied to shipments by rail only haven't they?

[fol. 990] A. That is right.

Q. Would that ratio, roughly 55 to the rest of the United States and 45 to the eastern territory as I have described it, be typical of the distribution of Armour's traffic between those same territories for the past ten years, or if different how would it be different?

A. I would say during the past ten years that ratio would be pretty consistent.

Q. It would be pretty consistent?

A. Yes, sir.

Mr. Blanchard: That is all.

Cross-examination.

By Mr. Zearfaus:

Q. Mr. Swanson, during the war years would the location of the training camps have any effect upon the distribution during the past ten years?

A. Well, yes, there would be some difference in the fact that we had priorities placed against us by the army requesting certain shipments to their camps.

Q. Did that change your percentages any?

A. In the past ten years it would change it. I am not in a position to comment on that at this time.

Q. Do you ship into New England?

A. Yes, sir.

Q. From where?

[fol. 991] A. We normally ship from what we call the egg basket area which includes these Midwestern states, Minnesota, the two Dakotas, Iowa, Kansas, Missouri, and Oklahoma.

Q. Have you noticed in recent years that there has been any change in the movement of eggs from those destinations that you have mentioned to New England?

A. Yes, there has.

Q. What is the difference?

A. Well, because of your local production the shipments have been cut down in proportion to the local production.

Q. So there have been some changes during the ten years haven't there, Mr. Swanson?

A. That is right.

Mr. Zearfaus: That is all, thank you.

Commr. Mitchell: Do I understand that Armour & Company only ships about 684 carloads of eggs a year?

The Witness: Well, that is the shipments made by rail. We ship a good many eggs by truck. In fact, I would say that we ship more by truck than we do by rail.

Comr. Mitchell: That is all. Thank you, Mr. Swanson.

(Witness excused.)

Mr. Blanchard: I will call Mr. A. W. Sayers.

A. W. Sayers was sworn and testified as follows:

Direct examination.

By Mr. Blanchard:

Q. Give your name.

[fol. 992] A. Arthur W. Sayers.

Q. By whom are you employed?

A. By Armour & Company.

Q. In what capacity, and what department?

A. Assistant Department Manager of the Claims Division, Traffic Department.

Q. And who is your superior officer?

A. Mr. W. J. Burns.

Q. He is the head of the Claims Division of the Traffic Department?

A. Yes, sir.

Q. Between the two of you do you or do you not handle all railroad claims filed by Armour & Company on behalf of any branch, plant, or other establishment operated by that company?

A. We handle all transportation claims for all plants, branches and subsidiaries.

Q. As between the two of you is there any distribution as to commodities, for example, is eggs assigned to either one of you?

A. No. No, all of the claims or 90 per cent of the claims with the exception of a certain few covering inbound shipments of livestock, pass over my desk and my supervision.

Q. But who personally handles the claims on eggs?

A. I do.

Q. You or Mr. Burns?

A. No, I do, up until the time they are presented to the railroad.

[fol. 993] Q. Yes. Now, describe the process that is experienced between the time that an Armour Branch House let us say in Brooklyn, New York discovers a damaged car of eggs and the time the claim reaches your desk and is prepared and filed with the railroad.

A. Well, of course, to begin with, we always keep in mind the nine months clause as a time element, and when a branch house receives a car of eggs damaged they arrange for the regular joint inspection participated in by the RPIA where they operate, and then it is a matter for the cashier. He is the office manager in the branch house. These figures are given to all and he prepares it depending upon the bulk and quantity work he has ahead of him; and then it come in——

Q. That is a claim against who? That isn't a claim against the railroad?

A. That is a claim to cover his damage on that particular car of eggs. We have a printed form for that purpose, and he attaches the destination freight bill with a

notation if he has one, or the RPIA joint inspection report. That comes into our general office accounting department known as the reclamation department wherein all claims of all natures come. Then when they find it is a possible transportation claim it comes up to us and of course——

Q. And thereby the branch house who suffered the loss is credited with the amount of the loss and the Chicago plant then becomes the claimant, is that right?

[fol. 994] A. Immediately, immediately.

Q. So that the branch except as they are called upon for information supporting the claim, has no further concern with it whatsoever?

A. That is right.

Q. Now, is that the case with all railroad claims handled by all Armour establishments throughout the United States?

A. That is true.

Q. Then would it be correct to say that if there were filed with any railroad in the United States a claim for damage in transit to eggs, that claim would be known to you?

A. Unless contrary to instructions the branch houses have filed a claim and I don't know of any. Sometimes we permit them to file small claims against truckers, where it is a local proposition, but as far as railroad claims as claims, they all come into us.

Q. How many years have you held your present position?

A. Twenty years.

Q. And during that time have you had any occasion where a branch house has filed a claim without your knowledge?

A. Not on eggs, if you will permit me to say so.

Q. On anything?

A. Yes, they have. On the Pacific Coast where the railroads make a habit of taking over salvage and the time element is involved we permit the branches out there to file a claim where it is just a matter to reclaim the value of the [fol. 995] damage probably taken over by the railroad.

Q. You have another man under your jurisdiction who handles that particular distant territory?

A. We have traffic managers at all of our small plants.

Q. Yes?

A. As you know.

Q. Now, at my request did you investigate and see how many claims you have in your possession at this moment occurring within the last three months which are in your hands for filing against the railroads?

A. I did. I have it here.

Q. Those are claims that are not yet filed?

A. That is right.

Q. Now, the losses on which those claims existed occurred during what period?

A. Well, April, May, June, July, and one in August.

Q. How many such claims do you have in your possession at this time?

A. Thirty-one, unfiled.

Q. Of that thirty-one claims that are now pending, how many of them involve shipment to the New York Metropolitan area?

A. Twenty-three.

Q. How many involve shipments—that leaves eight doesn't it?

A. Yes.

[fol. 996] Q. How many of the other eight involve shipments to destinations east of Buffalo, Pittsburgh and north of the Ohio and Potomac Rivers?

A. Eight.

Q. And do you mean that you do not have at this time and have not had in three months a single pending claim for damage to carloads of eggs moving to any other territory in the United States except this limited northern territory?

A. Correct.

Q. Now, you have been on this job twenty years, is that correct?

A. That is right.

Q. Going back five or ten years, to what extent is the situation revealed by your present claim file typical of the situation that has existed with regard to egg claims throughout that ten year year period?

A. Well, without figures to make comparison I wouldn't say correctly, but it has been my experience that we only know of the cars on which losses have been sustained. Now,

this compared with the number of cars shipped, of course, is not correct, but my experience has been that the claims on damaged shipments of eggs have decreased in number and decreased in amount, of course, due to the lower value of the egg.

Q. But I asked you, as between this territory which you describe in those pending claims and the destinations of all the rest of the United States, to what extent is this showing, 100 per cent of them in this territory and none [fol. 997] in the the others, to what extent is that typical——

A. Well, it is typical. It is typical because as I recall the handling of egg claims, this is the territory in which I would say 90 per cent of the damage occurs.

Q. That is speaking of rail shipments?

A. Now, you might have a car, as we did have during the war, going out to the Coast where it met with mishap, mostly an army car rejected or where we have claims on cars outside this territory that something extra happened to it in transit and I would say they were very few. I could count them on the fingers of one hand during that period.

Q. So that at least for the past five years your claim time as far as eggs are concerned has been consumed with considering claims to the New York Metropolitan area and the adjacent territory.

A. Correct.

Mr. Blanchard: That is all.

Commr. Mitchell: Cross examination.

Cross-examination.

By Mr. McDonald:

Q. Mr. Sayers, during the period that these 31 cars moved to New York and Eastern destinations, what would be the extent of the egg movement to other destinations, if any?

Mr. Blanchard: I object. That has been covered by the preceding witness who knows where the shipments moved. This witness only knows what claims were filed. The question is perfectly proper for the preceding witness.

[fol. 998] Commr. Mitchell: Well, as I understand, he

wants to know what claims were filed on shipments in other parts——

Mr. McDonald: I am asking him in effect what shipments they had to points other than New York or Eastern destinations on which claims might have arisen.

Commr. Mitchell: I think he may answer.

The Witness: Well, I don't know because I don't know the number of cars shipped, but I do know this, that these 31 represent all of the transportation losses on eggs that have come to our attention. Now, in this period we may get probably have a dozen more. We have about six in June or May, and eight I believe in June and ten in July. Now we just had one in August so far.

By Mr. McDonald:

Q. What was the earliest period involved in this 31?

A. Well, among these I would say we shouldn't go beyond the first of May because I have here three in April. Those claims on April shipments prior to that have been already filed and I don't have a record of them. These, you understand, are just unfiled claims.

Q. These are all claims as to which Armour was the consignee of the shipment?

A. Always, yes.

Q. Would Armour have plants out on the West Coast, for example, that would operate in the same fashion and so far as your claim practice is concerned?

[fol. 999] A. No, no, all of the claims come into the general office and are handled by——

Q. But you do have plants out there?

A. Yes, we do.

Q. Where would one of those be, for example San Francisco, Los Angeles, Portland?

A. San Francisco, Los Angeles, Portland, Spokane.

Q. What sort of an investigation, if any, is made by the local people at a point like Los Angeles and San Francisco, and so on?

A. On egg damage?

Q. Yes, before it is turned in to you.

A. Well, they just conduct their regular joint inspection if they find damage.

Q. Yes. How long would you say usually would it take for your office to be apprised of a claim by one of the outlying plants?

A. Oh, I would say two to three months.

Q. Two to three months?

A. Yes. In other words at the end of three months we would have all claims covering shipments three months prior.

Q. Yes.

A. They just percolate to us through routine channels.

Q. On that basis then, it is quite possible that there may be claims outstanding that haven't reached you for a part of that same period, isn't that so?

[fol. 1000] A. That is true, that would hold true of July and August. We only have one claim on August shipments but they will percolate through in the next month or two.

Q. Now, as to these 31 cars, what, generally speaking, would you say was the type or cause of damage alleged there, if you know?

A. Well, in most cases the claims are supported by the RPIA joint reports. You are probably familiar with that, where they have the report showing the number of cases in which damage is found, then they have a column for broken or total losses, leakers, checks and stains or cracks and stains.

Q. Do you know where these 31 originated?

A. Yes.

Mr. Zearfaus: He hasn't answered your question.

Mr. McDonald: May we have the last question and answer read there please?

(Record read.)

The Witness: Well, of course, if you assume that the railroads are liable for the damage.

Mr. Blanchard: You mean breakage and——

Mr. McDonald: Yes, was it——

Mr. Blanchard: I don't think he understands your question.

The Witness: Maybe not.

Mr. Blanchard: I think counsel means, Mr. Sayers, what

percentage were breakage, what percentage were delayed [fol. 1001] in arrival, market loss——

The Witness: We don't have that kind, very rarely.

Mr. Blanchard: Were they all breakage?

The Witness: All breakage, yes. And, as I say, they are all supported by RPIA inspection or as a bad order noted freight bill.

By Mr. McDonald:

Q. Each one of these, I think you said, were consigned to Swift & Company, is that correct?

A. No, Armour.

Q. Or Armour, rather, my apologies to both. They were all consigned to Armour?

A. To Armour and Company, yes.

Q. Do you know how many of the joint inspection reports covering these 31 cars show checks and stains for example?

A. Well, I think in most cases they show the four broken or total loss, leakers—I don't believe they use checks. Mr. Jensen can verify. Cracks and stains, the four categories.

Mr. Blanchard: I will be glad to furnish that. We don't have them here.

The Witness: Yes, we have them. I don't have the papers here.

Mr. Blanchard: If I may explain the purpose of this witness' testimony it may cut down the cross examination. I am perfectly willing to prove here first by the witness who knows where the cars moved, second by the witness [fol. 1002] who handled the claims, that claims are a purely eastern trunk line institution, as far as you can turn. The western destinations and the southeast never heard of them as far as Armour's business. It is only the eastern territorial matter that he is trying to prove.

Commr. Mitchell: Let us go ahead with this cross examination. I don't see where it is very material.

By Mr. McDonald:

Q. Is it your understanding, Mr. Sayers, that in the case of Armour & Company your claim experience is prac-

tically 100 per cent in eastern territory, as far as eggs are concerned?

A. Yes, sir.

Q. Sir?

A. As far as eggs are concerned.

Q. That is true not only for this particular period but for the last five years?

A. That is true.

Q. Where in New York City did these 31 cars go to. Do you happen to know that?

A. Well, most of them are billed, "C/O Moore Trucking Company, Brooklyn."

Mr. Blanchard: You have it on the back there. Give him the exact New York destination.

Commr. Mitchell: Oh, you don't want all that in this record, do you? It went to New York.

The Witness: I have got Brooklyn, New York City, or [fol. 1003] Newark, Yonkers, Mt. Vernon, and Jamaica.

By Mr. McDonald:

Q. And the other eight, where would they be?

A. Ten cars to Brooklyn.

Q. The other eight, where would they be, generally?

A. Well, five to New York——

Q. No, the other eight.

Mr. Blanchard: The other eight.

The Witness: Oh, the other eight. Let me see. They went to points in Pennsylvania, one car to Washington, Mt. Vernon.

Mr. Blanchard: Trenton?

The Witness: Wilkes-Barre, Trenton, Elizabeth, Trenton, Yonkers——

Mr. Blanchard: That is in New York.

The Witness: Saratoga Springs, Washington, Newark, Wilkes-Barre, Hazelton, Pennsylvania, that is all.

Mr. McDonald: That is all.

Commr. Mitchell: That is all.

(Witness excused.)

Commr. Mitchell: Call your next witness.

Mr. Blanchard: That is all that Armour and Company has.

Commr. Mitchell: Wilson & Company has some witnesses.

Mr. Simpson: I will call Mr. Kenney.

JAMES KENNEY was previously sworn and testified further as follows:

Direct examination.

By Mr. Simpson:

Q. Will you please state your name?

[fol. 1004] A. My name is James Kenney.

Q. By whom are you employed?

A. Wilson & Company.

Q. What is your position with Wilson & Company?

A. I have charge of the egg division of Wilson & Company.

Q. How long have you held that position?

A. About 25 years.

Q. Will you briefly state the practices employed by Wilson & Company in the handling and packing of eggs?

A. Well, we operate plants, both shell packing plants and breaking plants, similar to the testimony shown here by Mr. Schauert, and our method of handling is about the same. Do you want me to go into detail to just how we handle the eggs, where we get them——

Q. No, I don't think that will be necessary.

A. We follow practically the same procedure. We have standards of grades which we set up and we buy our eggs on grade from the farmers and then we make Wilson grades, and we have our own standards for those particular grades and we follow them to see that they are packed in that manner.

Q. You have heard the testimony here this afternoon with respect to checks. In your handling and packing process, do you endeavor to remove and eliminate every possible check that can be found in eggs packed?

A. Our instructions are that the checks are to be removed [fol. 1005] 100 per cent from the eggs. We are packing into the grades we ship.

Q. So that it is fair to state that Wilson & Company never knowingly ships a checked egg?

A. That is right. Yes, sir.

Q. Do you know whether Wilson & Company will file claims against the railroads on checked eggs which it may receive, that is shipments consigned by Wilson to Wilson?

A. No, sir, they will not.

Q. Based upon your own experience over these past 25 years, and including the experience of yourself and Wilson & Company in the past five years, do you feel that there is any need for a tolerance provision of the type that has been suggested?

A. I don't think there should be a tolerance of that type.

Q. Do you feel that such a provision would work a hardship upon a shipper such as Wilson & Company?

A. It would, yes.

Q. Has there been anything at all unusual in the claim experience with respect to eggs of Wilson & Company during recent years?

A. No. We haven't had any real large claims, perhaps a few, but in general they are average claims.

Mr. Simpson: That is all.

Commr. Mitchell: Is there any cross examination?

Mr. McDonald: One or two questions, Mr. Examiner.

[fol. 1006] Cross-examination.

By Mr. McDonald:

Q. Mr. Kenney, has there been any difference in the claim experience of Wilson & Company with respect to the New York market versus the balance of the country, let us say?

A. I could not tell you definitely on that because I don't have such a record, but from my own recollection our eggs are shipped direct to our branches in New York and we just haven't had really any more serious claims there than anywhere else. In other words, the records don't stand out

that we have been hurt very bad in New York in regard to damage.

Q. In other words, you are saying that in the past ten years the claim experiences of your particular company has then, varied materially?

A. That is about right, yes sir.

By Mr. Zearfaus:

Q. Mr. Kenney, in filing a claim for damage to eggs, if eggs were damaged by other causes than check, you would include checked eggs along with those other eggs, wouldn't you, in filing a damaged claim?

A. If we set this case aside as a damaged case, after raising covers and finding physical evidence on the top layer of the case, in our report of the damage as far as we went in to that case, if we found checks or stained eggs which became stained from the leakers or the other eggs, we would set that aside, yes.

Q. And include that in your claim for damage?

[fol. 1007] A. That is correct.

Mr. Zearfaus: That is all sir, that is all.

Commr. Mitchell: That is all, thank you sir.

(Witness excused.)

Commr. Mitchell: Any other witnesses?

Mr. Simpson: None for me.

Ronald H. Rice was sworn and testified as follows:

Direct examination.

By Mr. Barrett:

Q. Would you state your full name and address for the record?

A. Ronald H. Rice.

Q. And your home address?

A. 1425 Sheldon Street, St. Paul, Minnesota.

Q. What is your present position?

A. District Manager for the Northern plants of Cudahy Packing Company.

Q. And how long have you been employed in the egg business, either with Cudahy or with other companies?

A. Approximately 15 years.

Q. How long have you been an employee of the Cudahy Packing Company?

A. Six years.

Q. And what have been your positions with the company?

A. Plant manager.

[fol. 1008] Q. Until your present position and when did you attain your present position?

A. November, 1949.

Q. You say you are a district manager of the northern district?

A. Yes.

Q. Into how many districts are the Cudahy operations divided?

A. Roughly it was divided into two districts, the West Coast and Omaha District and Northern District out of St. Paul.

Q. And which plants are under your supervision?

A. Fairmont, North Dakota, Harvey, North Dakota, Granite Falls, Minnesota, New Ulm, Minnesota, Wadena, Minnesota. That is all.

Q. Are you familiar with the other plants of the company so far as egg operations are concerned?

A. I visited most of the other plants.

Q. Do you have actual knowledge from your own experience of the candling and packing and loading of eggs for shipment?

A. Yes. I started out many years ago with Beatrice Creamery and now in my duties in the northern states I visit these plants several times a month and observe the operations out there.

Q. Would you explain how the Cudahy Packing Company acquires eggs and how they are handled in the Cudahy plants?

A. Well, our method of procurement is almost the same

as mentioned earlier by Wilson and Armour and Swift. There is very little differentiation.

Q. And the handling within the plants, is that similar? [fol. 1009] A. Yes, it is practically the same.

Q. Are all of the eggs which are brought into your plants subjected to some inspection?

A. Yes, they are inspected twice. We take an inspection on each day's candling operations, a representative sample, and we take another check by USDA resident inspector at the time the eggs are loaded.

Q. Can you say of your own knowledge that all eggs leaving the Cudahy plants are in good sound condition from a commercial standpoint?

A. That is right.

Q. That all damaged eggs that come to your attention are removed prior to shipment?

A. That is right, we try to maintain a tolerance of at least one per cent.

Q. About what percentage of your shipments are made by rail?

A. It is a hard question to answer. I don't know exactly offhand, but it is some where from 25 to 30 per cent by rail I would say.

Q. Do you have knowledge of the damage that occurs to eggs during shipments by rail? Does that come to your attention?

A. Yes, all claims are cleared through our office in St. Paul.

Q. What has your experience been on damage on rail shipments?

A. We have had very little claims. Our office is new up there, since we have been started, but we ship probably, oh, ten to twelve cars a week and we have had very few [fol. 1010] claims with the exception of one or two that we happened to have a pretty heavy loss on.

Q. When you do have claims, about what is the average amount of the claim?

A. Well, it is usually over a hundred dollars. You very seldom see a claim that is less than that.

Q. Have you any knowledge of the cause of such damage? Is it evidenced from the experience you have had?

A. Of course, our eggs go to our branches and they are inspected by the manager on arrival or foreman, whoever is in charge of sales down at the egg department, and if we see when we open a car that it has been subject to this treatment, the cases are broken or shifted or something like that; usually we have to go into it and rework the thing, that is right, but normally if they meet local inspection and the tolerance is within one or two per cent of when they left the plant, why it is inspected.

Q. What inspection do they receive at destination?

A. Local inspection by our own employees; in case of a question we call in the USDA. All the eggs are USDA inspected when they leave our plant, and then in case of any difference on arrival we get USDA inspection.

Q. Have you noticed any relationship between the amount of damage on rail shipments and the size or shape of the eggs shipped.

[fol. 1011] A. Well no, we try to take out the odd sized eggs at the time they are packed. Anything that doesn't conform to normal size.

Q. When you ship jumbo sized eggs, do you use any special precautions?

A. Yes, we use special cases on our jumbos, a larger case and larger filler.

Q. Do you ever ship cases of eggs knowing that they contain damaged eggs?

A. No, not graded eggs.

Q. Based on your experience, do you believe the railroad should be allowed a tolerance for damage occurring on eggs in transit?

A. No; not at all.

Mr. Barrett: No further questions.

Cross-examination.

By Mr. Zearfaus:

Q. Mr. Rice, as I understand it, all of your eggs are subjected at point of origin to an inspection by a resident inspector of the United States Department of Agriculture?

A. Yes.

Q. And then you secure a certificate from that inspector?

A. That is right.

Q. And that certificate will show the condition of the eggs as to breakage and so forth, is that correct?

A. That is right.

Q. Do you see anything wrong in a rule in a railroad [fol. 1012] tariff that says where that certificate shows that there has been some breakage at the point of origin when the United States inspector makes it, that the railroad should not be held responsible for that breakage?

A. I would say this, that there has been no claim ever arising from any condition like that to my knowledge.

Q. I am asking, do you see anything wrong in such a rule?

A. Yes, I would.

Q. Is there any reason why the railroad should pay for the damage which the inspector certifiies to you at the point of origin is in that consignment? Do you think the railroad should be made to pay for that?

A. I would say yes if it comes down to an actual claim on that, that is right.

Q. What is the theory that you think the railroads should pay for breakage which occurs in the shipment prior to the time that they receive it for transportation and when the United States inspector tells you that that breakage is there? What is the reason that you say that?

A. Those eggs will never be shipped——.

Q. Sir?

A. Those eggs will never be shipped.

Q. I am asking you if they were shipped——

Commr. Mitchell: I don't think you understand the question, Mr. Rice. Assuming from you that they were damaged eggs before they were turned over to the railroad [fol. 1013] company and were certified by the Department of Agriculture inspector——

The Witness: No if the inspection showed they were damaged——

Commr. Mitchell: You don't think the railroads should pay for those?

The Witness: No, that is right.

Mr. Zearfaus: That is all.

By Mr. Knowlton:

Q. If the railroads should put in a tariff, a proposal say of three per cent of four per cent tolerance and then add a provision that would allow you to present this Department of Agriculture certificate instead of using the three or four per cent, use whatever is shown in that certificate, would you be satisfied?

A. No, I don't think so for this reason.

Q. That is at origin. If they say one per cent damage is in this car that you are loading?

A. Yes.

Q. And we put in the tariff permission for you to use that——

A. The one per cent that is already there.

Q. That alternative, which would be to limit your normal expectancy of damage to what was shown in that Department Certificate, would you be satisfied with that? Isn't that a fair proposition?

A. Yes, it would seem so off hand.

Mr. Knowlton: That is all.

[fol. 1014] Commr. Mitchell: That is all?

Mr. MacDonald: One or two questions.

Commr. Mitchell: All right. Limit them to material cross-examination. We have wasted enough time now on a lot of examination that was uncalled for.

By Mr. McDonald:

Q. What are the destinations, generally, of your shipments, Mr. Rice?

Commr. Mitchell: Where is this material? Are we just doing it to delay the case here?

Mr. McDonald: No.

Commr. Mitchell: Well go ahead, but let us have the material cross examination.

The Witness: We have branches throughout the east and south like the other packers. Our operation is practically the same.

By Mr. McDonald:

Q. Do your shipments generally move to all parts of the United States?

A. That is right.

Q. You spoke earlier in your direct testimony, Mr. Rice, of your attempts to load properly, and so on, and in doing so you said that you try to maintain a tolerance of at least one percent, and then later on in your testimony you say that generally speaking, if I followed you correctly, that you observe a tolerance of between one and two per cent as between origin and destination. I just want to be sure the record is clear on what you mean by that. What did you mean by the first statement that you try to maintain [fol. 1015] a tolerance of one per cent, would that mean that you load——

A. Well, the inspection sheets will average not to exceed one per cent on the eggs we pack and ship. I will put it that way.

Q. In other words, generally speaking then, there is an admitted one per cent defect in the eggs you ship generally, according to USDA Certificates, is that it?

A. Human percentage of error, that is right.

Q. And by the other statement I would infer that you mean to say that you won't file claims if that hasn't increased beyond say two per cent; is that right?

A. That is right.

Mr. McDonald: That is all I have.

Mr. Barrett: I have more redirect.

Redirect examination.

By Mr. Barrett:

Q. On the USDA inspection, when you speak of a tolerance of one per cent or two per cent, what type of damage is that?

A. Blind checks, usually, that show up in there.

Q. That is, if there were broken eggs or leakers, would that be permitted by the USDA?

A. Oh that would never be shipped. I mean we would rework a case where anything like that would come up.

Q. Do you ever file claims or do you know of the company having filed claims where the eggs could be deliverd at destination at the same grade at which they shipped?
[fol. 1016] A. No.

Mr. Barrett: That is all.
Commr. Mitchell: Any further cross examination?

(No response.)

(Witness excused.)

[fol. 1017] Commr. Mitchell: Any further witnesses?
Mr. Staley: Yes, sir. I will call Mr. Winters.

Earle Winters was sworn and testified as follows:

Direct examination.

The Witness: In view of saving time could this be copied into the record rather than reading the whole thing and just pick out a few pertinent items?
Commr. Mitchell: If there is no objection it will be copied into the record.
Mr. McDonald: May we have a minute here to read it?
Commr. Mitchell: You can read it and we will go ahead with the testimony. There are seven railroad lawyers. Certainly it isn't necessary to have seven cross examining one witness.
The Witness: My name is Earle Winters, Chairman, Traffic Committee of the New York Mercantile Exchange, New York, New York.
As representative of the New York City and Eastern egg receivers I must protest the issuance of Items 19555A to 14589, both inclusive, on pages 3 and 4 of Supplement No. 7 to Consolidated Freight Classification No. 19, Agent A. H. Greenly's C. T. C.—O. C. No. 63, I. C. C.—F. F.—O. C. No. 5, M. F.—I. C. C.—O. C. No. 10, I. C. C.—O. C. No. 63; Agent Robert E. Boyle's, Jr., C. T. C.—S. C. No. 30, I. C. C. —F. F.—S. C. No. 13, M. F.—L. C. C. No. 31, I. C. C. No. 107; Agent Geo. H. Dumas' C. T. C.—W. C. No. 30, I. C. C. [fol. 1018]—F. F. W. C. No. 5, M. F.—I. C. C. No. 10, I. C. C.

No. 32; Agent R. G. Raasch's I. C. C.—F. F.—I. C. C. No. 10, M. F.—I. C. C. No. 73, I. C. C. No. 685, published to become effective May 1, 1950, and now under I. C. C. Docket No. I. and S. 5792.

In the June 24, 1925, issue of the "American Egg and Poultry Review" we find the following item: "Causes of Egg Damage: 1. Rough handling of cars; 2. Wrecks; 3. Temperature failures; 4. Delay; 5. Errors of employees; 6. Robbery; 7. Defective equipment; 8. Fire loss."

It is of our opinion that the above list, now twenty-five years old, could be revised only slightly to bring it up to date in 1950, namely: 1. Rough handling of cars; 2. Defective equipment; 3. Wrecks; 4. Delay; 5. Errors of employees.

Rough handling in transit is still the paramount cause of railroad damage in the shipment of eggs.

Schedule No. 1 had been prepared on the total number of cars of eggs received by Zenith Godley Company, Inc., 176 Duane Street, New York 13, New York. I am a member of that firm and can personally attest to the facts and figures shown in that schedule. I have personally watched and aided in the loading of cars at the plants of origin shown in that schedule. I have also personally inspected each car shown on arrival at destination. You will note that out of eighty carlots of eggs shipped and received, thirty-three cars were received in good order and forty-seven cars were received in bad order.

[fol. 1019] Schedule No. 2 shows that regardless of delivering carrier used or point of origin, the same ratio seems to exist. Is it not possible that if thirty-three cars from the same points of origin and same routings can be handled by the railroads without damage, then there must have been some mishandling of the forty-seven cars from the same points of origin with the same routing and arrived with evident damage?

The above named cars were loaded in the same manner and by the same people at the various points of origin and never once has the Railroad Perishable Inspection Agency made any notations on these cars as having been loaded in violation of railroad tariffs.

Each car was handled in the same manner and inspected

in the same way at destination. The claims on the bad order cars must have been warranted because all the claims have been paid in full and with fairly good speed.

Through inspections made by the Western Weighing Bureau on cars of eggs and lots of eggs at point of origin they have struck an average of 2.7 per cent damage in the eggs at that point. Their inspections were made with the aid of a candling lamp. This point we are willing to concede and at no time has a receiver of eggs asked the railroad to pay for any of that damage. Proof of this point is shown on Schedule No. 3 and I can attest to the truthfulness of each item on this schedule personally.

[fol. 1020] On the cars of eggs received in good order and inspected by the United States Department of Agriculture, we find that the average of the cars inspected contained 7.3 per cent damaged eggs as determined by the candling lamp. This was accepted by the consignees and no claim was placed against the railroad.

On these cars of eggs received in bad order, claims were filed and all damaged eggs were recovered from the cases. After removing the damage, the United States Department of Agriculture inspected the eggs and found that the consignee still accepted 7 per cent damage.

What we are trying to prove in these figures is there there is already an automatic tolerance of damage in the shipment of eggs which the trade is accepting every day without the filing of a claim against the carrier. If this five per cent tolerance were to be added to that accepted tolerance, it would result in a theoretical raise in freight rates and the price of eggs to the consumer.

If, however, the railroads insist on assessing this five per cent tolerance rule on the shipper or receiver, then it would only be fair to allow the amount of damage to be ascertained by the same method that it was found at point of origin in the Western Weighing Bureau tests, by candling. If this would be an accomplished fact, the total amount of claims filed under this system would be disasterous to the railroads.

Let me point out again that a shipper and the receiver are [fol. 1021] both proud of the type of package which they produce and it is asinine to believe that any shipper or receiver would even think of deliberately loading damaged

eggs into a car for shipment. The thought that either the shipper or receiver could profit by such a procedure is readily disproved by the fact that a major portion of a claim is for labor, material and inspection. The claim for actual damage is the smallest part of the claim. The receiver or shipper pays out more than he receives from the railroad for labor. On every Railroad Perishable Inspection Agency claim slip you will find the notation to the effect that a certain number of hours of labor is not allowed for the lifting of covers to ascertain damage. The shipper or received however must pay for that labor just the same. The amount of material used in repacking a car is paid for by the railroad, however the receiver or shipper has to pay the same amount out to buy the material in the first place, so there is no profit there. The maximum a shipper or a receiver could hope to make on the actual damage is one cent per dozen or less. Anyone in the egg business will tell you that for the sake of one cent per dozen on a few damaged cars it is not worth the trouble to file a claim and wait three to twelve months for your money to come in from the railroad. Besides that point there are enough receivers in the business who are willing to pay a shipper more on every car of eggs just to be privileged to have that mark of eggs to sell.

[fol. 1022] The proposed assessment of a tolerance rule on the transportation of eggs by railroads is in reality an increase in the rates charged for that service. Some innocent party must, under the new tariff, assume the cost for the damaged eggs. Since the farmer is under a parity rule by the government, the processor on a more or less cost plus basis, the receiver on a commission basis, then it is only reasonable to assume that the cost of railroad negligence will be borne by the consumer.

In the above observation that the processor is on a cost plus basis, we find that his receipts from the eggs he ships to a terminal point is solely governed by the official quoted market on the day of arrival of his merchandise at the point of destination.

By Mr. Staley:

Q. You observed the eggs in the demonstration of Mr. Jensen which he testified about were large eggs. Are you

familiar with the type of eggs which generally reaches the New York City market?

A. Yes, I am.

Q. What portion of those eggs consist of extra large eggs such as were used in the demonstration?

A. I can't give a percentage but it is a very small part of the total receipts and I base that on the fact that I happen to be vice-president of the Mercantile Exchange where eggs are traded daily. Eggs are traded there because of a law of supply and demand. The most popular grade of [fol. 1023] egg traded on the Mercantile Exchange is extra No. 1 large, which would be the next grade below the size of egg of those china eggs weighing about forty-five to forty-seven pounds in a case.

Q. What sort of damage is ordinarily suffered by an elongated egg?

A. An elongated egg which would probably suffer the most damage in my experience is a crown check. A crown check is an indentation on the top of the egg. It wouldn't necessarily cause a leaker to exist. That type of egg can be salvaged as a check, whereas a leaker must be practically thrown out or lost entirely.

Q. Does a side damage to an egg cause a check or a leaker ordinarily?

A. A side damage to an egg would naturally cause a leaker because of the shape of the egg.

Q. Do the purchasers ordinarily ship or reject a car depending upon the type of damage in the case, that is, whether it is horizontal damage in the position of the eggs in the case and so on? Are they able to determine from that whether they want to accept or reject the car?

A. That is the general system in New York City of accepting or rejecting a case of damaged eggs. That is, the way the damage lays in the case, the type of damage done, not necessarily the number of eggs broken but the way the damage is. You see we only have the privilege of looking at [fol. 1024] the top layer and we have to judge from that top layer what might exist below it, and after we have set aside what we consider to be damaged cases our R. P. I. A. then gives us the green or red light as to whether or not we can go ahead and repack and file a claim.

Q. They tell you at that time whether you can file a claim?

A. The inspector tells us we may repack and file a claim. He doesn't give us any assurance it will be paid but he says it warrants repacking.

Q. In your experience have you ever had a buyer turn down a shipment of eggs merely because of checks alone?

A. No, I have not.

Q. Well, let's assume that in a given car of eggs there was one per cent damage at origin on U. S. D. A. inspection. Do you think the railroads should pay for that?

A. If the U. S. D. A. inspected a car of eggs at point of origin and found one per cent damage, I would say the railroads should not have to pay for it with this proviso, that we be allowed at our end of the destination to inspect that car with the same method that was used at point of origin and that is by the use of a candling lamp and then we could determine the amount of damage.

Q. From that I infer that you think the railroads at present are not paying for any damage which was in the eggs at origin, is that right?

A. No, they are not. I have in my testimony here a [fol. 1025] schedule to more or less prove that, which is Schedule No. 3. On a number of cars of eggs received by my firm—I have limited my testimony to my own firm because I can personally attest to the authenticity of the figures—the first group of cars were cars received by Zenith Godley Company in New York in good order and inspected at destination by the U. S. Department of Agriculture. We find in that list the total of stains, checks and loss average 7.3 per cent. That 7.3 per cent includes a loss item there which would not enter into a damage claim. That loss item in a Department of Agriculture inspection consists of bloods, black rots, and so on.

By taking that loss I find on my Department of Agriculture receipts the average total of stains and checks amounts to about three to four per cent at destination. Now this is in all good order cars.

The second group of cars are cars received in bad order and inspected after reconditioning. That is, the damage has been taken out. We found that the same ratio exists which to me is definite proof that the railroad hasn't been charged for anything. It was there when the car started

out because we have accepted the same amount on good and bad order cars.

Q. Do you wish to have identified and accepted in evidence as an exhibit these schedules that you have attached to your testimony?

A. Yes.

[fol. 1026] Commr. Mitchell: The exhibit will be marked Exhibit No. 59.

(Respondents' Exhibit No. 59, Witness Winters, marked for identification.)

By Mr. Staley:

Q. Exhibit No. 59 consists of four pages, does it not?

A. That is correct.

Are you entering all schedules under the same number?

Commr. Mitchell: If there is no objection it will be admitted as Exhibit No. 59.

(Respondents' Exhibit No. 59, Witness Winters, was received in evidence.)

Commr. Mitchell: Cross examine.

Cross-examination.

By Mr. Zearfaus:

Q. Mr. Winters, I would like to ask you a couple of questions in connection with New York City. You say that you are representative of the New York City and eastern egg receivers and you are authorized I presume to appear on behalf of certain of them here?

A. That is right.

Q. Is that the New York Mercantile Exchange particularly?

A. Particularly, that is right.

Q. And that consists of a number of receivers of eggs at New York City and its environs?

A. That is right.

Q. Do those receivers make the inspection of the eggs [fol. 1027] by their own employees or do they employ independent contractors to do that work for them?

A. The general practice is that, well, they do it both ways. Sometimes a member of their own organization will inspect, a regular employee, and at other times they use a crew of men with a foreman who is independent and is what we call shape-up labor. He works when we work. He is not regularly employed by the company.

Q. Are there certain concerns that provide that service that these receivers can go to and ask for that——

A. No.

Q. Does the compensation of these independent contractors vary according to the amount of claim which the railroad company pays their employer?

A. No. Every R. P. I. A. slip that accompanies a claim stipulates the number of hours of labor allowed, and that is what the men are paid, that is, they are paid that and the consignee has to pay a little bit more.

Q. Well, does the consignee employ some one man who gets a gang of men to go and perform this work and these men are paid by this one man? Is that the way it is done?

A. It is paid by the firm, not by the foreman.

Q. By the firm?

A. By the firm who employed them.

Q. Would that be the receiver or would that be some [fol. 1028] independent person?

A. No, that would be the receiver.

Q. Well, what is the operation? Does the receiver employ a foreman?

A. Generally a foreman, one man.

Q. They ask him to go out and get men to perform this work for them?

A. That is right.

Q. Who pays those men that the foreman employs?

A. The firm.

Q. They are paid directly by the firm of the consignee even though the employment is actually done by a third person?

A. Yes. The reason a foreman rounds them up is because there happens to be a union proposition and the firm hasn't the time to check priorities on union men. As a result we send the foreman to the union room to get a gang of men for us.

Q. Is the foreman a regular employee of the consignee?

A. No.

Q. Then he gets a special compensation I suppose for doing this work, doesn't he?

A. Just exactly what the other men get, $1.85 an hour.

Q. He gets nothing more whether the claim is large or whether it is small?

A. He gets only what the R. P. I. A. allows on the slip.

Q. Just a per hour basis?

[fol. 1029] A. When he comes in to get paid or any other man and the gang comes in to get paid, they have to present their yellow R. P. I. A. slips to the cashier and the hours are computed from that.

Q. Therefore it would be to the advantage of the foreman to prolong the inspection, wouldn't it?

A. These are union men. Under the union rules they are not allowed to repack more than four cases an hour.

Q. Then the greater the number of cases that he would inspect the greater the amount of his compensation, isn't that true, the greater number of hours?

A. The greater number that he would repack.

Q. Yes, so therefore his compensation would depend upon the amount of damage that he would find by opening these cases?

A. Providing the R. P. I. A. approved it, because they are there watching it all the time.

Q. Well, don't they have the opportunity under the present rule to open a case if they find a damaged egg in twenty cases?

A. They can only look at twenty cases, top layer.

Q. And if they find a damage there they can inspect the whole——

A. Go through the whole bunch.

Q. Yes.

A. Inspect and set aside those bad orders.

Q. So therefore it would be quite a long time for these men to work to inspect the whole carload if they were to find one damaged egg in one of the twenty cases, wouldn't it?

[fol. 1030] A. It takes about a day and a half.

Mr. Zearfaus: That is all. Thank you.

Commr. Mitchell: Mr. Winters, I noticed in this exhibit that you offered that you had out of eighty cars, forty-seven marked bad order cars.

The Witness: Yes.

Commr. Mitchell: That is correct, isn't it?

The Witness: Yes.

Commr. Mitchell: Now we have a record here which shows that along in 1947, I think it was, fifty per cent of the total revenue received by railroads at New York City on egg shipments was paid back by way of claims. This record now shows that the railroads paid back in 1949, was it 27 or 29 per cent? Who has the record?

Mr. Hodkinson: Exhibit No. 48. I forget the figure. The first six months of 1950.

Commr. Mitchell: 27.1 per cent. 27.1 per cent of the total revenue was paid back.

You don't believe that the railroads can operate profitably into New York City hauling eggs and pay back 27.1 per cent of their revenue, do you?

The Witness: I don't believe it is 27 per cent of their total revenue. The carload of eggs at these points particularly is $300.00 freight out of which $168.00 seems to be the average claim.

[fol. 1031] Commr. Mitchell: Well, in this exhibit you say the average payment of freight on your cars there is about $300?

The Witness: Yes.

Commr. Mitchell: According to Exhibit No. 48, the average claim cost per car of total cars billed was $104. That is about 33 per cent. Well, isn't it a fact that you, as a business man know that the railroads can't conduct business in that way?

The Witness: Then they should do like we do when we find we are losing business, revamp themselves and try to find out what is wrong, and that is what we are trying to find out for them.

Commr. Mitchell: But the unfortunate part of this whole thing is that we don't find that situation in any other part of the country except New York.

The Witness: New York, possibly is unique in itself. New York is the end of the line. When the eggs get there they must be distributed to somebody to eat. As a result of the total number of eggs received in New York they must be gotten rid of, sold, and there are quite a few of we re-

ceivers in New York City. Competition is keen. We operate on a cent to a cent and a half gross profit a dozen. That is and has been our profit for the last forty years. We have revamped ourselves to enable ourselves to stay in business at the same gross profit that we had forty years ago through efficient methods.

As a result we are very claim minded in New York City. We have to be because when you compute a claim you will [fol. 1032] find that a major portion of the claim is for labor. The minor portion of it is for the actual damage to the eggs. The actual damage to the eggs amounts on an average claim to about a half cent a carload, about $90 a carload.

Mr. McDonald: A half cent a carload you say?

The Witness: A half cent a dozen a carload. If you take that half cent away from our cent and a half or cent, we are kind of pinched so we must file for that damage.

Commr. Mitchell: What I am trying to get at, Mr. Winters, and what bothers me is, is whether the railroads are capable of operating at a profit into New York City without some kind of a tolerance that will absorb part of this loss.

The Witness: We are absorbing that tolerance already. We are not asking for any damage that doesn't occur by the railroad. We are already absorbing three to seven per cent as I brought out in my schedule here.

Commr. Mitchell: Let us assume now that you are not, but on this record they are losing money hauling eggs into New York City. Now, they shouldn't continue in that manner of doing business?

The Witness: They can haul eggs in without damage. They hauled 33 cars from the same point of origin, the same routings as these other 47 and there was no damage.

Commr. Mitchell: Yes, but out of 80 cars they had 47 with bad order so that percentage won't help you.

[fol. 1033] The Witness: If they could do it on three, they should be doing it on 47 more.

Commr. Mitchell: With you they are not doing it. We have got to meet this situation as it is, and what is bothering me is, whether or not the railroads are capable?

The Witness: I think they are.

Commr. Mitchell: Of hauling eggs into New York at a

profit. You say that the people in New York, due to this gross margin of profit that you have, are very claim minded and that apparently appears by this record to be correct, but the question is, can railroads continue to haul a commodity on which they are losing money as they are on this commodity?

The Witness: I could not answer that for the railroads.

Commr. Mitchell: Most of your eggs are coming now by truck, aren't they?

The Witness: None.

Commr. Mitchell: You are not getting any?

The Witness: I don't use a truck.

Commr. Mitchell: I notice by these figures here that the number of cars going in to New York has dropped from 7,000 to——

The Witness: That is very true. That you will find is due to the fact that there are a number of receivers in New York City, smaller receivers, who can handle eggs by truck. I would have gone to truck a year ago myself if I could have handled four to five thousand cases on a Monday morning [fol. 1034] in my place of business, but I could not do it. Today I would not go to truck because they are having the same trouble railroads are right now.

Commr. Mitchell: You mean they are having claims?

The Witness: They are having claims.

Commr. Mitchell: Is their rate lower, their truck rate lower?

The Witness: Yes, the truck rate is lower, and the reason I won't go to a truck if I could help it is because the railroads give me the best service that I can possibly ask for. I know when a car leaves; I know where it is every point of the way, I know when it is going to get in, it is unloaded for me, it is protected for me more or less, and when I file a claim I am backed by the RPIA. If I ship by motor truck I don't know where the truck is, I don't know when it is going to get in. If I file a claim I have got to dicker with the fellow over the tape and try to get my claim. There is a number of features in favor of the railroads.

Commr. Mitchell: Unfortunately, the railroads are losing money, in my judgment, hauling eggs into New York. That is what is bothering us.

Have you any further testimony?
The Witness: No, sir.
Commr. Mitchell: Further cross examination?
That is all.
(Witness excused.)
[fol. 1035] Mr. Staley: I will call Mr. Wilharm.

ELMER WILHARM was sworn and testified as follows:

Direct examination.

By Mr. Staley:

Q. State your name and your occupation.
A. Elmer Wilharm, manager-owner, Farmers Produce Company, Tripoli, Iowa.
Q. Do you have plants at Tripoli and Clarion, Iowa, at which eggs are gathered, candled, graded, and shipped?
A. Yes, sir.
Q. Would you tell us the manner in which the eggs are received, candled, packed, and shipped from there?
A. I would say it is very similar to all the testimony that I have heard here today, the same as the other packers.
Q. Are the egg candlers supervised closely to see that they don't permit any checks or broken eggs to get into the eggs which are being packed?
A. Yes, sir.
Q. Why?
A. We have to pack a good commercial grade that is acceptable to our customers.
Q. Are any checked or broken eggs ever knowingly packed by the candlers and packers?
A. No.
Q. Do you ship eggs to the firm represented by Mr. Winters?
[fol. 1036] A. Yes, sir.
Q. And did you ship to him the eggs shown in his Exhibit No. 59 as having come from Tripoli and Clarion, Iowa?
A. Yes, sir.

Mr. Staley: That is all.
Commr. Mitchell: Cross examination.

Cross-examination.

By Mr. Knowlton:

Q. Do you have United States Department inspection at origin?

A. No, sir.

Q. You could if you wanted it, couldn't you?

A. Yes, sir.

Mr. Knowlton: Nothing further.

Mr. Reilly: I have one question, if I may.

By Mr. Reilly:

Q. How do you load at your plant at Tripoli, Iowa, directly from the plant to the rail car?

A. Yes, sir.

Q. Is it the same at Clarion?

A. Yes, sir. We are right on a siding.

Mr. Reilly: Thank you.

Commr. Mitchell: Do you collect your eggs and then candle them there at your plants in Clarion?

The Witness: Mostly direct with producers. I would say over 98 per cent.

Commr. Mitchell: You mean you collect them from the farmer then load them immediately without rehandling on the car?

[fol. 1037] The Witness: No, it is rehandled and repacked, a hundred per cent of our eggs, graded one hundred per cent.

Commr. Mitchell: And you ship most of your eggs to New York City?

The Witness: Yes, sir.

Commr. Mitchell: Is that right?

The Witness: Right.

Commr. Mitchell: I guess that is all.

(Witness excused.)

Mr. Staley: I will call Mr. Geurkink.

FRED GEURKINK was sworn and testified as follows:

Direct examination.

By Mr. Staley:

Q. Will you state your name, please, and your address and your occupation?

A. Fred Geurkink. I am the owner of Fred J. Geurkink Company here in Chicago.

Q. And in what business is that company engaged?

A. I have country stations where I have eggs packed, my own stations.

Q. Where are those stations located?

A. There is one in Baldwin, Wisconsin, one in Austinville, Iowa, and one in Kensett, Iowa.

Q. And are you familiar with Mr. Schauert's testimony on behalf of Swift & Company in which he described the [fol. 1038] manner in which the eggs are received, candled, graded, packed, and shipped by Swift & Company?

A. Yes, I am.

Q. Are the eggs handled in the same manner at the plants which you operate?

A. Yes. We candle and grade all our eggs, pack them in new cases for shipment.

Q. Are the egg candlers and packers supervised carefully to see that they do not pack eggs which are checked or cracked or broken?

A. Yes.

Q. Have you had occasion to receive a car of eggs in Chicago in damaged condition, and have it reconditioned and thereafter have a USDA inspection report on the eggs which have been separated as being good eggs?

A. Yes, I have.

Q. Will you describe that car?

A. Well, the car came out of Austinville, Iowa, two years ago, in 1948. It was inspected on September 1st in the country, and there were two inspections on them, 300 cases were inspected. They had a check count of 2.25. Three hundred more cases had a check count of 2.42. They were shipped to the Chicago Cold Storage for storage. When it arrived here there was damage in it, and I don't recall the exact

number, but about 80 cases had to be reconditioned. They [fol. 1039] found the damage amounted to 180 dozen of checks, 116 dozen leakers, and 34 dozen lost. The damage claim to the I. C., Illinois Central which carried the car, was $225.84. What the salvage was I don't know because that was sent direct to them from Rotenberg and Sneider who took care of the salvage. Then September 15th, in the storage case, 589 cases were counted and the check count was 4.9.

Mr. Staley: That is all.

Commr. Mitchell: Cross examination.

Cross-examination.

By Mr. McDonald:

Q. Who made these inspections that you mentioned first, 2.25 and 2.42? Were they USDA inspections?

A. Yes, they were.

Q. How many other cars in that particular year did you ship, other than this one, approximately?

A. Oh, I would say a hundred.

Q. Did you have any experience with respect to the other 99 like this or is this just one unusual car?

A. No, there was another car that had more checks at destination than origin.

Q. Any others than those two?

A. We had several cars that were damaged.

Q. Anything like this, or are they just these two unusual ones?

A. That I know of. These two are the ones I know of.

Mr. McDonald: That is all.

Mr. Staley: That is all.

Commr. Mitchell: Any further cross examination?

[fol. 1040] (Witness excused.)

Mr. Staley: I will call Mr. Ford.

Mr. Ford's testimony has been reduced to writing. I would like to ask him some preliminary questions to identify his exhibit and so on, and then if it is agreeable his testimony could be copied into the record and he could be cross examined. Is that all right?

Commr. Mitchell: If there is no objection it will be so ordered.

G. F. Ford was recalled and testified further as follows:

Direct examination.

By Mr. Staley:

Q. State your name, address, and occupation.

A. Gilbert F. Ford, Chicago, Illinois. I am in charge of the rate division of Swift & Company's general transportation department at Chicago.

Q. In what connection, what are your duties, generally?

A. I have supervision over all rate, claim, general rules and regulations having anything to do with paying money to the railroads or collecting it back from them.

Q. How many years' experience have you had in traffic and rate matters?

A. Well, with Swift & Company, 30 years.

Q. Have you prepared an exhibit for us in this proceeding?

A. I have.

[fol. 1041] Q. Have you prepared that yourself or was it prepared under your supervision?

A. It was.

Q. Are the facts and figures set forth in that exhibit true and correct to the best of your knowledge?

A. They are.

Mr. Staley: I would like to offer it to be identified.

Commr. Mitchell: It will be 60.

(Respondents' Exhibit No. 60, Witness Ford, marked for identification.)

The Witness: The Commission instituted an investigation of the 5 per cent tolerance rule, published in the Classification, under ICC Docket 30030. At the Brooklyn, N. Y. hearing on December 15, 1949, the carriers attempted through their witness Hodkinson to offer an exhibit and get the Commission to authorize the application of further tolerance rules but this was denied by Commissioner Mit-

chell. Subsequent thereto, the carriers proposed identical changes in a special docket of the Official, Illinois, Western and Southern Classification Committees in a joint hearing on January 24, 1950 in Chicago, Illinois. Objections were offered by all shipping interests present.

Having held public hearings, the carriers then proceeded to publish Supplement 7 to Consolidated Freight Classification No. 19 which bears Agent Greenly's ICC OC 63, Boyle's ICC 107, Dumas' ICC 32 and Raasch's ICC 685. [fol. 1042] Apparently this supplement was filed on behalf of all parties to the Classification which includes numerous truck lines and freight forwarders although we have never heard of any truck line or forwarding company authorizing the adoption of such rules and certainly none of them have ever offered any testimony in Docket 30030 or this suspension proceeding. The attorneys and witnesses appearing are all employes of the rail lines.

The change in the tariff rules that brought about the investigation under ICC 30030 was the one that provided that the carriers would not be responsible for any claim on the first 18 eggs found damaged in any case upon arrival at destination where such eggs had not been rehandled and repacked at the rail origin of the shipment. We have protested this rule because we were quite certain that our eggs were not reaching the carriers with an average of 5 per cent shell damage regardless of where they were rehandled and repacked and regardless of whether they had had a previous truck movement. We are also certain that the damage to our eggs is, generally speaking, occurring while in the possession of the rail carrier. Our record of shipments indicates that eggs that have had a truck haul prior to being offered to the railroads reached destination without railroad claim with as great regularity as are those shipments which are rehandled and repacked at the point of rail shipment.

Under Supplement 7 the 5 per cent tolerance rule now in effect on graded eggs would be changed so that there [fol. 1043] would be a 6 per cent tolerance unless the eggs were subject to federal or state inspection at the origin of the rail shipment, in which event the state or federal inspection certificate should be utilized as the base for the

tolerance with 1 per cent added to make the railroad feel good. Thus the railroads propose in this tariff to continue the 5 per cent tolerance on graded eggs plus 1 per cent. These tolerance rules are not based upon any substantial check of shipments at origin points of the rail shipments.

In addition to this the carriers are here proposing to establish a 4 per cent tolerance on rehandled and repacked eggs and storage packed eggs. This means that if we packed perfect eggs at our Chicago warehouse and offered 600 cases or 18,000 dozen perfect eggs at Chicago and the railroad restroyed 15 eggs in each case or 9000 eggs equaling 750 dozen that we would not be able to claim against the railroad for such loss.

There is another clause in connection with this portion of the rules that provides that where federal or state inspection agencies show the shell damage at origin to be other than 3 per cent that such per cent shall be increased 1 per cent for the good of the road in considering claims.

One of the objectionable features of the carriers handling of this case and ICC Docket 30030 is that they use the term actual shell damage rather than checks, cracks, leakers, etc. In the earliest investigation of the egg claim question by the Commission, it was stated that checked [fol. 1044] eggs would travel to destination as well as those where there was no check or crack in the shell. A checked egg is one where there has been some fracture even the slightest of the shell without any breaking of the membrane inside the shell. It is accepted as a sound egg in trade circles up to a certain per cent and when we deliver a shipment of eggs under a standard U. S. grade, there may be included up to 3 per cent of checks but these are not and have not been considered in any circles as broken eggs. The only reason that they become a part of a claim is because the railroads have damaged the shipment en route. We may deliver a case or a carload of eggs with a certain number of checks under the standard grading but when the railroad damages the eggs and creates a lot of broken eggs, they have necessarily destroyed the entire grade of the eggs offered at origin.

The most unreasonable position of the carriers in connection with the statement of claims under the 5 per cent

tolerance rule now in effect on graded eggs is that they are attempting to charge all of the loss divided upon a percentage basis so that the shipper must assume part of the damage created by the carrier. Doubtless if this rule was adopted, they would try to do the same thing on all eggs.

Under the existing 5 per cent rule we must consider 18 eggs as having been damaged at origin and under our packing rules this would only mean that we must assume responsibility for the first 18 eggs. In view of the fact [fol. 1045] that we are not permitted under our grading to have more than 3 per cent checked eggs and we try to avoid having any we could not have possibly started out with more than 11 checked eggs. If the case of eggs reached destination with 36 eggs having shell damage divided 12 checks and 24 broken which would yield on the market 40 cents for the dozen checked eggs and nothing for the 24 broken eggs, we would have a net loss of $1.10 based upon three dozen eggs at 50 cents a dozen. What the carriers try to do is to consider that we must assume a tolerance of 18 eggs or one-half of the damaged eggs. Thus they want us to assume 55 cents of the net loss and they would assume 55 cents of the net loss. The unreasonableness of this position is apparent because we did not have any broken eggs in the shipment and had the carrier not damaged the shipment in transit, we could have collected the full price on all of the 30 dozen eggs; but simply because the railroad damaged our shipment we must help them pay the expense of such damage after we have paid them the published tariff rate to handle our shipment to destination in good order.

We have insisted and we believe properly so that under the existing tolerance rule on graded eggs we cannot be expected to assume more than the least damage to eggs in the shipment as in this illustration. As unreasonable as it may seem the rule should not be interpreted to make us assume anything more than the 10 cents loss on the dozen of checked eggs and 25 cents loss on the half dozen broken [fol. 1046] eggs or 35 cents. Therefore, out of $1.10 loss the carriers should assume 75 cents; and even at that we

are assuming 35 cents that we would not have had to assume had the carrier not damaged our shipment in transit because we could have delivered the shipment under standard grade without loss if we did not exceed 3 per cent of checks.

These remarks have only applied to the actual value of the eggs but the carriers are not satisfied with this settlement. They want us to assume a share of their burden of supplying new materials and the labor necessary for repacking and let us assume that this expense is 40 cents per case. Under their theory they would want us to assume one-half of this or another 20 cents per case while all of this expense was caused by the carriers' action in damaging the case of eggs.

It is apparent from the language of the tariff rule that such is not proposed in the suspended tariff nor is it included in the existing 5 per cent rule on graded eggs, and we have resisted any attempt to apply it to our shipments. There have been some instances where the carriers' theory would have given us a few more dollars than were claimed but regardless of who benefits by the carriers' method, the settlement is unlawful and we will have no part of it.

We shall show by the exhibit the effect on our claims if the carriers are permitted to establish any such rule and while there has been a substantial drop in the amount of such claims, there has been a much greater drop in the [fol. 1047] number of cars shipped, and while the carriers have talked about claims averaging 18 to 20 per cent of the total revenue on eggs, we have always insisted that such figures were improper because the claims paid in any one year never reflect the movement of eggs in the same year, and the best showing that these figures are fantastic is that for 1949 the claims equaled 30 per cent of the 1949 revenue even though there was a reduction of about one-third in the total money paid for claims. This is all brought about the fact that the egg shipments in 1948 amounted to over 21,000 carloads with revenue of almost $10,000,000 while in 1949 the railroads hauled 9,037 carloads of eggs with revenue of approximately $4,000,000. In my opinion a more reasonable application of these

figures would be the 1949 claim payments applied to the 1948 shipments, and this would show claim payments of 8 per cent of the revenue.

Page 2 of the exhibit shows the number of carloads of eggs for the years 1945 through 1949. In 1949 the carriers received about 20 per cent as many eggs as they received in 1945. The revenue, however, due to general increases was about 1/3, showing a marked increase in the revenue per car. Opposite these revenue figures we show the claims for unlocated damage and the per cent the claims paid are of total revenue. Since 1941 the claims on eggs have gone up from $110,000 to over $2,000,000 with a substantial reduction in the number of cars handled beginning in 1946. As ridiculous as it may seem, the carriers have constantly applied the claim payments for any given [fol. 1048] year to the cars handled in the same year although it is well known that damage claims may be filed as much as nine months after the date of delivery and naturally the carrier cannot pay such claims without investigation. This means that many additional months must elapse before the claims may be paid. Thus, a logical way to consider this matter would be that the claims paid during a given year would generally apply principally to shipments moving in the previous year.

Using the carriers' method of discussing claim payments, we find that the claim payments for 1945 amounted to 9 per cent of the revenue; in 1946, 17 per cent; in 1947, 19 per cent and in 1948, 18 per cent; but using this same method of calculation, we find that the 1949 claim payments were 30 per cent of the revenue. If the handling of some of our claims is any indication, it is logical to assume that the carriers are going to pay in 1950 a lot of claims involving 1948 and 1949 shipments. Thus, the per cent for 1950 may rise to 100 because the shipments by truck are growing so fast and the shipments by rail are reducing in like manner. There was more than a 50 per cent reduction in the number of cars 1949 as compared with 1948. If this continues, we may have less than 5000 cars in 1950, yet the claim payments may be greater than the 1949 payments.

There is only one correct way to apply claim payments

to revenue, and that is to consider the claim payments on shipments moving during the same year in which the [fol. 1049] revenue is considered. This is what I have done on this exhibit. I do not think that any exact figure can be reached unless the carriers cooperate and make the claim analysis that we have previously discussed in ICC Docket 30030, but a far better method of calculating the total claims as indicated on this exhibit would be to apply the 1949 claim figures to the 1948 revenue, and this would show slightly less per cent of claims paid to total revenue than is shown opposite the 1945 figure.

There has been no satisfactory showing by the carriers that the present 5 per cent tolerance rule or those under suspension in I&S 5792 are justified, and we again urge that if the carriers are sincere in their statements that they want to reach a proper solution of this claim problem that they make a claim analysis which would be relatively inexpensive but extremely informative to themselves and the Commission. They could do this by having a copy of each claim paid sent to a central organization such as the Claim Prevention Bureau of the Association of American Railroads.

I would suggest a copy of the claim form made up by the claimant because this gives all essential information such as the name of the shipper, the origin point, the name of the consignee, the destination, the route, and essential information as to the amount of damage claimed by claimant. These forms could be used as the basis for the preparation of a statement which would show total number of [fol. 1050] claims from each origin point, the total number to claims to each destination; the total number of claims from each origin to each destination; the total number of claims on each railroad involved in the route and the amount of money involved from each origin to each destination as well as in connection with each railroad. This would not be as big a job as it might sound because according to the carriers own calculations their average claim during the two million dollar year was about $85.00 per car shipped but it is perfectly obvious that not every car of eggs was damaged. In fact, the Swift record shows that only about 15 per cent of our cars shipped were damaged,

but even if 50 per cent of the cars were damaged, it should only be necessary to compile a statement covering from 10,000 to 15,000 claims.

The carriers seem pretty certain that three-fourths of their damage throughout the United States occurs in New York, and they must have some facts upon which they base this statement; therefore it is possible that the very information that seems essential to this proceeding is now available to the carriers, and they do not choose to furnish it.

Our position in this case is very sound, that is, that we do not want the Commission to permit the establishment of a rule that will make us assume the expense of damage caused by the carriers, and it is quite certain that this must result from the proposed rule as it does result under the present rule. A recent illustration of this was one of [fol. 1051] our shipments upon which there was a claim. This car contained both graded and rehandled and repacked eggs. The inspection showed that due to the particular damage on this shipment and the manner in which it was damaged the graded eggs checked out at destination with less than 1½ per cent damage per case while the rehandled and repacked eggs checked out with over 7 per cent of damage; therefore, the fact that eggs have had a previous truck movement does not necessarily mean that they have been damaged.

Further in this connection, we find in our over the road movements of eggs from our Dairy and Poultry Plants in the west to the east that our claims are negligible if we compare the average applied to all trucks shipped and a fifty dollar claim is unusual, the claim usually resulting from one case being dropped. In such instances the truck line usually takes the case of eggs and pays for them.

Not all eggs are subject to a USDA grading or in fact any grading other than the shippers own grading.

As stated in ICC Docket 30030, Swift & Company shipped 1,970 carloads of eggs by rail in 1948. At that time we attempted to impress upon the carriers the importance of correcting the claim situation and not rely solely upon the rate question which was then before them. Out of these 1,970 cars we had 296 that were damaged with an

average claim of $207 and an average claim per car shipped of $31. This figure changed somewhat in 1949. We forwarded less than half as many cars or 974 and out of [fol. 1052] these cars 157 of them were damaged upon arrival at destination with an average claim of $164 and an average claim per car shipped of $26.54. These figures are somewhat less than 1948 but not sufficiently less to claim that any reasonable improvement in handling has been made.

In view of this condition and the rate question, our total volume by rail for the first five months of 1950 was 249 cars. As this is the heaviest shipping season of the year, it is indicated that our volume by rail for 1950 will not exceed 50 per cent of the 1949. Thus, we have gone down 50 per cent in 1949 and 1950, which means that 1950 will be about 25 per cent of the 1948 volume, and this is not a discontinuance of shipping. It is the diversion of traffic to other forms of transportation.

Claim payments on our idea of tolerance.

We continue to have some difficulty in settling our damage claims with the railroads. They still want us to assume part of the labor and materials expense and they also want us to average the salvage and make a division of the total loss based upon the proportion 5 per cent tolerance represents of the total claim, i.e., if 10 per cent of the shipment of graded eggs was damaged resulting in checks, cracks, leakers and totally destroyed eggs, they want us to average the loss and assume part of the claim based upon the relationship of the tolerance to the total. This we refuse to do because we do not offer broken eggs to the [fol. 1053] carriers and under no conditions do we pack other than blind checks. Any damage beyond this occurs after the eggs are packed. It is our position that in applying the tolerance rule they must allow us the best of the eggs involved in the claim because we did not pack anything worse than this type of eggs. Then they should pay for the other eggs which are their responsibility. They should also pay all labor and materials because there would have been no claim had the shipment had not been damaged in transit.

Again it should be pointed out we are taking an unwar-

ranted loss on these cars where a claim arises because even if we had the maximum of 3 per cent of checked eggs in the case which is entirely too high under our packing rules we would have no penalty at all in making delivery at destination but because of the damage caused by the carrier, the grade of our entire car is broken down and we must either take a downgrading of our shipment or candle, rehandle and repack the entire load. This places an undue burden on the shipper and if anyone has an idea that we should assume part of the railroad's claim, it would certainly be removed by the fact that it makes us take an unwarranted loss either by downgrading or by candling rehandling and repacking the entire load.

We have discussed this method of settlement with the railroads and they tell us the Railroad Perishable Inspection Agency insists that they must settle claims by their [fol. 1054] formula. We tell the railroad that we are not concerned about the Agency's ideas because our contracts are not with the Agency. We insist upon settlement of our claims upon a reasonable and proper basis as I have outlined it in both of these cases and to date where the question has arisen we have made settlements with ten Western, Central and Eastern railroads upon the basis for our ideas.

Our method of settlement does not always yield us as large a claim as is offered under the RPIA formula. It all depends upon the exact manner of the breakage. In the settlement of a recent claim we agreed to accept $34 less than we would have received under the RPIA formula and in some other claims that have been the subject of recent conferences, the differences amount to from one to three dollars. The only idea advanced by anyone in the carrier group was that such a formula has been in use in the handling of current receipts for many years. We did not know that the railroads handle any current receipts but certainly this is an entirely different type of shipment and consists of eggs which have never had any kind of inspection.

Pages 4 through 10 list the claims filed by Swift & Company for damage to carload shipments of shell eggs and show that of such shipments, claims totalling $25,848.07

were filed. These shipments all moved during the calendar year 1949. Other columns on this statement show the rate from origin to destination in effect on date of shipment and the revenue per car. These total on the shipments upon which there were claims $52,543.44 which in- [fol. 1055] dicates that on the shipments upon which we had claims, the average claim amounted to approximately 50 per cent of the revenue. This does not have any connection with our previous statements concerning our total number of carloads or our average claim per car shipped but applies solely to the revenues and claims on the shipments were a claim developed.

The important thing in this connection is that the average claim of Swift & Company was only slightly in excess of the average claim indicated by the carriers per car shipped. There is quite a difference in these calculations because our figure has nothing to do with the 817 carloads upon which no claim was filed. If we apply our total claims to our total cars shipped, we find the average to be $26.54, but the important thing here is that even on shipments where there was a claim our total claim equalled slightly less than one-half on these identical shipments and some of the carriers talked about the claims completely wiping out the revenue on the average.

These claims all represent damage caused by rough handling in transit and range up to $3500 for a car. They also range down to $5.00 per car.

Pages 11 to 14 represent our claims on rehandled and repacked eggs refigured allowing the tolerance of 4 per cent as proposed by the carriers in the tariff under suspension. I have not figured the 6 per cent tolerance which would undoubtly apply with the high percentage of these shipments [fol. 1056] but roughly speaking, the amount of reduction in the claim would be increased by 50 per cent using the 6 per cent tolerance.

It has been impossible to make any kind of a separation of the various kinds of eggs remaining at destination; therefore, we had to base our figures on averages adopting the practice suggested by the RPIA. We do not want the adoption of this practice in preparing these pages to be

looked upon as any acceptance by us of this principle. We are confident it is wrong and we do not want anyone to misunderstand what is shown in these pages. The statement is self-explanatory and indicates that the total of these claims amounts to $18,191.75. Applying the 4 per cent proposed tolerance, these claims would be reduced to $12,101.36. The difference between these two figures is $6,035.55.

Should we apply the 6 per cent basis, we would increase the $6,000 figure to $9,000 and by a 6 per cent tolerance we would have the net result of a 50 per cent reduction in our claims; thus, it will be seen that 4 per cent or 6 per cent as calculated in the carriers' proposals could become a vicious thing and it could result very logically in making the shipper assume about a million dollars a year that the carriers are now assuming without any suggestion upon the part of the carriers that they would even try to correct their handling of eggs and regardless of any improvement in the handling of eggs which would reduce the amount of claims, we would still have that 50 per cent figure.

[fol. 1057] We hear so much about the high damage to eggs which go along with dressed poultry, butter and cheese that it would appear appropriate to file some comparative figures showing what the carriers are now doing in connection with dairy traffic. These rates are from principal producing points to New York and Boston. They show the present dressed poultry, butter and egg rates compared with new rates published by the carriers on dressed poultry, frozen eggs, butter and cheese to become effective September 11, 1950. These new rates to New York and Boston average a reduction of 45 cents and based upon a 30,000 pound load, this would be a reduction of $135 per car. It is not unreasonable to assume that eggs are moving to a very large extent in 30,000 pound loads because the average for 1949 was 27,220 pounds for the United States.

The carriers did not establish these new rates to apply upon eggs in the shell but did provide them on all other dairy products; thus, they are obtaining an additional amount of revenue on eggs in the shell above that obtained

on other dairy traffic which will more than offset their present high losses through egg claims.

During 1949 we shipped 246 carloads of shell eggs to the Pacific Coast states of Washington, Oregon, California. Only five of these shipments were partially damaged and claims filed.

The total loss on four of these claims was $119.19 or an average loss of only $29.78 per car. The total revenue on [fol. 1058] these four cars was $2423.16 which means the claim loss was only 4.92 per cent of the total revenue. We have not included the claim loss on the fifth car in these figures as this car was wrecked and claim loss was $1678.96. Further the five damaged represented only partial loss to 2.325 per cent of the cars that moved.

These figures show that western carriers are giving our eggs the careful normal handling they should and which we expect. Further they realize that this traffic is a source of desirable revenue and to encourage the additional return of this desirable traffic they reduced the rates on eggs *Noibn* to Pacific Coast Points in Groups 1, 2 and 3 from Group J. (Denver) minimum 24,000 pounds effective 7/16/49 from 213 to 135, a reduction of 78 cents, from Group E (Mississippi River) minimum 24,000 pounds effective 7/16/49 from 290 to 238 a reduction of 52 cents and minimum 30,000 pounds, effective 8/18/50 from 290 to 188, a reduction of 102 cents. Similar reductions were made from other origins in Groups D, F, G, H, I, etc., all in Agent L. E. Kip's Tariffs TCFB ICC 1536 and 4-X ICC 1537.

This statment shows the total revenues and tons for the years 1941 through 1949 taken from ICC statistics with the total freight claim payments for the same years.

In 1941 the claims amounted to .392 per cent of the total revenue. This figure has grown steadily until in 1947 it reached 1.334 per cent and 1.269 per cent in 1949.

[fol. 1059] The figure is considerably different when you apply current year to the previous year's freight revenue. For instance if we apply the 1942 claims to the 1941 revenue, we get claims of .528 per cent and under the same formula 1948 would show 1.415 per cent and in 1949 it would be 1.132 per cent.

It is apparent from this that the carriers' claim record is far from satisfactory on commodities generally. There could not under any conditions be a claim that shipments are not being handled with more damage today than they have in the past because according to previous figures submitted in these cases the freight rates have gone up about as much as the increase in the value of commodities but according to the carriers' claim figures, they have gone up over five times, that is, from $16,000,000 to $88,000,000 a year.

By Mr. Staley:

Q. In addition to your testimony that has been reduced to writing, Mr. Ford, do you have any other statements to make?

A. I just wanted to clarify or add to two spots. At the bottom of page 6 of the written statement I would like to add the following: We have applied cla. .s on all eggs, straight or mixed carloads, against the revenue and carloads of—straight carloads of eggs only, and that is the way that I understand the claim figures of the railroads are prepared. In other words, the claim figures represent all egg claims and the carload figures as to revenues and number of cars represent only straight carloads. At the [fol. 1060] bottom of page 14, just before the last paragraph, I would add that the figures that I have shown as to our claims applies so far as the claims are concerned to all egg claims but the average is determined by dividing that into the number of straight carloads of eggs. That does not represent a true and correct figure because we have many more carloads containing eggs than are represented by those straight carload shipments.

Commr. Mitchell: I don't believe I quite understand that statement.

The Witness: Well, Mr. Commissioner, if you will note, that question came up earlier in the day and you asked about my previous statement in the other hearings as to the low amount of claims.

Commr. Mitchell: Yes?

The Witness: And someone mentioned $12 and I said that the $26 figure that we used was not exactly correct

but gave the benefit of the doubt to the carriers and should I apply our claims against every car that contained eggs our claims would be far below the $26.

Commr. Mitchell: I see. All right.

By Mr. Staley:

Q. Mr. Ford, where a shipment of eggs to the A & P Tea Company in New York sustains transportation damage, who files the claim, the A & P or Swift & Company?

A. The A & P makes their adjustment with the RPIA as to the nature of the damage, and those figures are all [fol. 1061] set up in a claim against Swift & Company, and we file the claim with the carrier.

Mr. Staley: That is all.

Commr. Mitchell: Cross examination.

Mr. Zearfaus: I haven't had a chance to read but four pages. I don't know how my colleagues are making out.

Commr. Mitchell: Well, go ahead and read it. You have got seven or eight railroad lawyers here. There is no reason why some of them couldn't read it.

Let the record show that the hearing waited while the railroad lawyers read Mr. Ford's statement.

Cross-examination.

By Mr. Reilly:

Q. Mr. Ford, commencing at page 6 of your prepared statement, and going through, approximately, as I understand it, to the middle of page 9, you say that the method of relating the claim payments to the revenue is not a correct method of setting up the claims. I assume that you are speaking of the AAR claim figures?

A. Yes. Everything that has been used throughout these hearings has been on the basis of the eggs moving this year as compared with the claims paid this year.

Q. Now, as I understand your picture here and your statement, you are criticizing the fact that the claim payment made in 1949 relate to the eggs that moved in 1948?

A. I am saying that generally speaking I would think that a more reasonable basis for applying the claim pay-

[fol. 1062] ments in 1949 would be to apply them to shipments moving in 1948 for the simple reason that you have nine months to file a claim, and I don't know of anybody that files a claim in less than three months, and it is often even as much as six or even nine months before the claim is filed, and with the reducing number of carloads shipped each year that we have been talking about, we have always applied a high claim figure to a reducing revenue figure.

Q. Now, if you will turn to Witness Hodkinson's Exhibit No. 48, which covers shipments moving in the first six months of 1950 which relates the claims filed against the shipments to the revenue derived therefrom do you see the result there which you feel should follow? Is there a reduction in the percentage of claim materially?

A. I must compliment Mr. Hodkinson on being the first person in this proceeding on the railroad side who has ever attempted to give any comparison of claim with the same cars shipped.

Q. Now, would you answer my question, please, Mr. Ford?

A. The statement speaks for itself. There it is.

Q. In other words, there has not been the great reduction in the amount of claims that you state in your statement, I believe, which would come down to around, "In my opinion a more reasonable application of these figures would be the 1949 claim payments applied to the 1948 shipments, and this would show claim payments of eight per cent of the revenue." Now, if you take the actual shipments [fol. 1063] that moved in 1950 and compare the claims filed in 1950 against the total revenue you have 27 per cent, don't you?

A. No.

Q. Is then, that what Mr. Hodkinson's Exhibit No. 48 shows, the average?

A. As they say, figures don't lie, but you can figure out how your figures are used. Now, let us talk about what we are talking about. You are talking about shipments to New York and New York alone. I am talking about the United States.

Q. But you haven't made any study, have you, Mr. Ford comparing the 1949 claim payments applied to the 1948 shipments?

A. No, these are commission figures and your figures. That is all I have.

Q. They are AAR figures which are trying to relate two totally unrelated things, are they not?

A. Isn't the AAR part of the railroad organization?

Q. I didn't ask that, Mr. Ford. I said the AAR figures are trying to compare two totally unrelated things, are they not, in other words, claim payments made in 1949 against 1949 revenue have no relation——

A. It is true the AAR figures relate only to the amount of money paid out in 1949 for claims. That is all the AAR figure is.

Q. As against the amount of revenue received in 1949 for egg shipments?

A. I don't know of any AAR figure like that. I had to [fol. 1064] put them together out of the Commission's figures and the AAR figures. I don't know of any figures of that nature.

Q. Now, since Mr. Hodkinson has done what you believe is a proper way to show the picture for New York, does that change your mind any?

A. Not in the slightest because he has confined it to New York.

Q. As to New York, then, does it change your picture?

A. We can't talk about a nation wide situation comparing one city when you folks admit that 75 per cent of your claims are New York and not 75 per cent of your shipments.

Q. Mr. Ford, do you have Mr. Hodkinson's Exhibit No. 11?

A. No, I don't. That is the previous hearing, isn't it?

Q. That is right, for 1947.

A. No, I don't have that.

Q. I believe in Mr. Hodkinson's Exhibit No. 11 for the year 1947, he related the total claim payments in relation to the total revenue?

A. For the same year?

Q. For the same year.

A. For the amount of money paid in one year for the amount of money he received in one year.

Q. No, sir, the same shipments. The claims were filed

and paid on cars that moved in 1947 and the revenue was credited to the year of 1947 and the same shipment.

A. Again I compliment Mr. Hodkinson. I have overlooked these figures.

[fol. 1065] Q. Then the statement made in your prepared statement *made in your prepared statement* beginning on page 6 and ending at the middle of page 9 criticizing the railroad presentation, its method of preparing the claim stastistical data here is incorrect then, is it not?

A. Only to the very limited extent that you have shown it.

Mr. Reilly: I have no further questions. Thank you.

Commr. Mitchell: Any further cross examination?

Mr. Knowlton: No.

Mr. McDonald: No, sir.

Mr. Staley: I just have on- further question, your Honor.

Commr. Mitchell: Go ahead.

Redirect examination.

By Mr. Staley:

Q. Referring to the Commissioner's question with respect to whether the railroads are being operated profitably, that is, can transport eggs properly into New York City, do you have any ideas on that subject?

A. Yes, I do. They have been commented on in the original write-up but I think it might be well to just point out that effective September 11th, that is, next Monday, the railroads have published reduced rates on dressed poultry, butter, cheese, and eggs other than shell eggs to Class 35 or 34 per cent of first class. This would reduce the rate, for instance, from Clinton, Iowa to New York by 50 cents per hundred pounds, and on the 30,000 pound [fols. 1066-1067] minimum required that would reduce the revenue by $150. They have not published such reduction on shell eggs so evidently they are getting $150 additional on that car as above what they get on other dairy products, all of which have heretofore been moved at the same rates.

Mr. Staley: That is all.

[fol. 1] **Plaintiff's Exhibit No. 2**

INTERSTATE COMMERCE COMMISSION

No. 30030[1]

SPECIAL REGULATIONS—EGGS

Submitted——— Decided———

Schedules under suspension in I. & S. No. 5792, providing special regulations governing descriptions, marks, inspection and delivery of eggs and the handling of claims thereunder found not to result in unreasonable or otherwise unlawful practices. Investigation discontinued.

Schedules under suspension in O. & S. No. 5792, providing special regulations governing descriptions, marks, inspection and delivery of eggs and the handling of claims thereunder found not justified. Suspended schedules ordered canceled without prejudice to the filing of new schedules in conformity with the findings herein.

C. H. Johns for the Interstate Commerce Commission.

James P. Canny, Rowland L. Davis, Jr., G. H. Durvas, W. S. Jensen, Alfred A. Knowlton, J. Edgar McDonald, Harold H. McLean, John F. Reilly, A. J. Stilling, John R. Wall, William F. Zearfuss, and *William F. Zinger* for respondents.

E. M. Brannon, F. W. Denniston, and *Raymond Krebill* for the Secretary of the Army of the United States; *Chas. B. Bowling, Charles W. Burg, Walter D. Matson* and *Leon Schilt* for the Secretary of Agriculture of the United States, and *Charles A. Root* for the Public Service Commission of Utah, protestants.

P. J. Arturo, Fred T. Barrett, Earl W. Benjamin, Paul E. Blanchard, Willard K. Brown, Lloyd C. Dell, Harry D. Greene, Harrison F. Lones, James Kenny, Roy L. Mc-

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[1] This proceeding also embraces Investigation and Suspension Docket No. 5792, Damage Tolerance on Shell Eggs.

Donough, Donald A. Morken, Robert C. Neill, W. G. O'Barr, T. R. Phillips, Ross Dean Rynder, Louis R. Simpson, E. K. Slusser, Robert H. Smith, John P. Staley, W. M. Tuohy, and *Drue Williardson* for other protestants.

REPORT PROPOSED BY FRANK E. MULLEN AND MARTIN J. WALSH, EXAMINERS—Filed April 25, 1951

By order dated July 23, 1948, division 2, on its own motion instituted an investigation into and concerning the reasonableness and otherwise lawfulness of the special regulations governing descriptions, marks, inspection and delivery, and the handling of claims thereunder in connection with the transportation, in interstate or foreign commerce, of shell eggs from, to, and between points in the United States, with a view to making findings and prescribing reasonable rules, regulations and practices relative to such transportation.

[fol. 2] During the course of the hearings in the title proceeding, respondents, by schedules filed to become effective May 12, 1950, proposed to change in certain respects, as hereinafter specifically indicated, the special regulations then under investigation. Upon protests by the Department of the Army, the United States Department of Agriculture, State regulatory bodies, and numerous shipper organizations, operation of the schedules was, by order entered by division 2 on May 11, 1950, in I. & S. No. 5792, suspended to and including December 11, 1950. Respondents have voluntarily deferred the effective date of these schedules to and including June 11, 1951. As the suspension proceeding pertains to the same matters as the initial investigation, it was consolidated therewith for hearing and disposition. The schedules under investigation in the title proceeding, as well as those included in I. & S. No. 5792, are published in the consolidated freight classification and apply, or are designed to apply, nationwide.

All common carriers of property by railroad parties to the schedules under investigation were made respondents. Copies of the orders of investigation and notice of hearings were served upon them and upon all protestants. Hearings were held at Chicago, Ill., Brooklyn, N. Y., Washington, D. C., and Los Angeles, Calif.

Prior to July 24, 1948, the rules and regulations in the consolidated classification governing descriptions, marks, inspection and delivery of eggs, in carloads and less-than-carloads, in all territories, and the handling of claims thereunder, hereinafter referred to as the prior regulations, were those which became effective July 15, 1919 pursuant to the findings in *National Poultry, Butter & Egg Assn.* v. *New York Central R. Co.*, 52 I.C.C. 47, decided January 21, 1919, hereinafter referred to as No. 10012.

Under those rules and regulations, as originally published, no inspection of the contents of cases containing eggs was permitted at Boston, Mass., New York, N. Y., or Philadelphia, Pa., when (1) no cases showed external evidence of damage, (2) cases had not been recoopered in transit, (3) no part of the lading had shifted, or (4) the lading had not been transferred in transit from one car to another. At all other points, consignees were permitted to lift the lids of 25 per cent of the cases, not exceeding 20, in one shipment and examine the top layers for damage. If damage to the contents was disclosed by such inspection the rules permitted further examination of the top layers of other cases selected by the consignee. All cases containing damaged eggs were then set aside for reconditioning.

On October 25, 1919, shell egg shipments delivered by rail at Philadelphia became subject to the 20-case inspection rule. No further change was made until February 10, 1941, when the rules theretofore applicable at all other destinations were made effective on shipments delivered at Boston and New York. With the exception of certain changes, not here important, the above rules were not basically changed until July 24, 1948.

The prior regulations provided that shippers of eggs should be required, among other things, to note on the shipping order and bill of lading the character of the shipment, namely, whether current receipts, rehandled current receipts, rehandled and repacked eggs, storage packed eggs, checks or dirties, and the number of cases of each. Rehandled and repacked eggs were defined as those re- [fol. 3] handled and repacked in new standard cases with new flats, fillers and cushions, in accordance with the classification requirements. Eggs of the other descriptions in-

dicated were not specifically defined in those regulations.

Upon arrival of shipments of eggs at destination the consignee or his representative had the right, before the eggs were removed from the possession of the carrier and under the supervision of the carrier's representative, of performing the inspection provided for in the classification for the purpose of ascertaining whether such shipments contained damaged eggs. If such examination showed no evidence of damage it was considered complete and final for the entire shipment and a receipt indicating that the shipment was in good order was required of the consignee. If, however, such examination disclosed damage, the consignee had the right further to examine the shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases was then conducted by a representative of the carrier and by the consignee or his representative, and the extent of the damage, together with the facts pertaining thereto noted on the paid freight receipt or other document and signed by the joint inspectors. Prior to February 10, 1941, the carriers, in making such notations in connection with shipments to New York recognized such damage only as to cases showing external evidence thereof.

In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than 5 percent of the eggs was damaged, hereinafter sometimes referred to as a tolerance, no claim would be allowed. Where the damage exceeded 5 percent, claims were allowed for all damage in excess thereof if the examination developed carrier liability. Each case was used as a unit, provided information was furnished the carrier by joint inspection or otherwise of the damage in each container. In other instances the entire consignment was used as the unit.

In the adjustment of claims for damage, the notation made on the paid freight receipt or other document by the joint inspectors was considered conclusive as to the extent of the damage. No expense incurred by the consignee in the ascertainment of damage was allowed. In case, however, of the carrier's liability, actual and necessary charges for labor and material in reconditioning the damaged cases, including the damaged contents, were borne by the carrier. If, however, by such reconditioning the value of any damaged case

or its contents became enhanced, the increased value was credited to the claim.

The prior regulations, to the effect that no claim for damage would be allowed in connection with shipments of eggs if not more than 5 percent of the eggs was damaged, applied only in connection with eggs described on the shipping order and bill of lading as current receipts, and rehandled current receipts. On shipments of storage packed eggs, storage packed dirties, and rehandled or repacked eggs, claims for actual damage, as evidenced by the notation made on the paid freight receipt or other document would be allowed. Those regulations reflected the findings in No. 10012, at page 59, which reads:

> [fol. 4] A tariff rule applied to shipments of current receipts or rehandled current receipts that asserts that claims for broken eggs will not be considered or paid by the carrier when the number of broken eggs in any case or crate is not in excess of 5 percent of the contents of such case or crate not found to be unreasonable or unlawful.

It was also found in that proceeding that a like restriction in respect of claims for damages to shipments of eggs would be unreasonable and unlawful except when applied to current receipts or current receipts rehandled.

Under the prior regulations the carriers were paying large claims for damage to shipments of shell eggs. In an effort to improve that situation certain changes in the regulations were proposed. Schedules containing those changes were protested by certain parties, but the Commission permitted them to become effective, without being suspended, effective July 24, 1948. The investigation in the title proceeding concerning their lawfulness was, however, instituted. Under those schedules, hereinafter referred to as the present regulations, provisions for notation on the shipping orders and bills of lading as to the character of the shipments and for inspection of such shipments somewhat similar to those in effect prior to July 24, 1948 were reestablished. The schedules provided, however, that the descriptions "rehandled and repacked" and "storage packed eggs" shall apply only to eggs rehandled and repacked, and graded and

sorted, respectively, at packing plants or storage warehouses located at point of origin of the rail shipment; and that the terms "current receipts" or "graded" shall apply to eggs not complying with the above descriptions. In the prior regulations "rehandled and repacked" and "storage packed eggs", in respect of which claims for actual damages had been permitted, were not restricted to shipments handled and repacked, and graded and sorted at point of origin of the rail shipment. Those descriptions included such shipments irrespective of the point of origin. Shipments thus described could originate at points other than the point of origin of the rail shipment, and, could be hauled to that point by truck or other mode of conveyance. As a result of these restrictions eggs, not originating at point of origin of the rail shipment but which previously had been included within the descriptions "rehandled and repacked" and "storage packed eggs" are now included within the terms "current receipts" or "graded" eggs. If an examination of the top layer of 25 percent, with a maximum of 20 cases, of a shipment of eggs thus described shows 5 percent or less damage it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of the consignee.

Respondents were relieved under the prior regulations from paying claims for damage on eggs described as current receipts or rehandled current receipts when the damage was 5 percent or less. Claims were paid, however, on eggs of those descriptions when the damage exceeded 5 percent, and on eggs of all other descriptions to the actual extent of such damage properly authenticated. Under the present regulations claims for actual damage apply only on rehandled and repacked and storage packed eggs when such operations are performed at point of origin of the rail ship-
[fol. 5] ment. On eggs of all other descriptions respondents pay no claims for damage when the examination, heretofore indicated, shows that such damage is 5 percent or less.

As stated, during the course of the hearings in the title proceeding the respondents filed new schedules, hereinafter referred to as the proposd regulations, the operation of which was suspended in I. & S. No. 5792.

These schedules contain proposed special regulations governing descriptions, marks, inspection and delivery of eggs somewhat similar, except as hereinafter indicated to those contained in the prior and present regulations. Under them the shipper must insert, among other things, on the shipping order and bill of lading the type of package (wooden or fibreboard), and the number of packages entirely containing checked, cracked, stained or dirty eggs. These regulations provide that upon arrival of shipment at point of delivery the consignee or his representative shall have the privilege of opening each package, at no expense to the carrier, except where the examination establishes carrier liability, and of initially examining the contents thereof; provided, howeved, on notice by the carrier, that such examination shall be in the presence of the carrier's representative. If any package contains eggs having shell damage for which the carrier may be deemed responsible the contents of such packages shall be jointly inspected by the consignee and the carrier, or their authorized representatives. Any damage to the eggs shall be jointly recorded by the consignee and the carrier, and such joint record shall be conclusive as to the nature and extent of damage.

The proposed regulations further provide that on eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where physical damage to the eggs at destination does not exceed 4 per cent of the contents of the packages containing damaged eggs; and that on eggs placed in packages at points other than the rail point of origin no claim shall be allowed where the damage at destination does not exceed 6 per cent. Where the damage on such respective shipments exceeds 4 and 6 per cent claims shall be allowed for all damage in excess of these amounts if investigation develops carrier liability. The proposed regulations also provide that where *bona fide* certificates of Federal and State egg-inspection agencies showing the physical damage to eggs, determined at the rail point of origin of the shipment immediately prior to tender thereof for rail transportation, indicate the actual shell damage to eggs placed in packages at the rail point of origin to be other than 3 per cent, and to eggs not placed

in packages at the rail point of origin to be other than 5 per cent, the percentages of actual damages as shown on such certificates, plus 1 percent shall be used in lieu of the 4 and 6 per cent, respectively, heretofore indicated.

The proposed regulations differ principally from the present regulations in the following respects: (1) They authorize the opening by the consignee of each package in the shipment as compared with the opening of not to exceed 20 cases under the present regulations, except where an examination of these cases shows damage in excess of 5 per cent; and (2) they substitute tolerances of 4 and 6 per cent, respectively, on shipments of eggs of all descriptions whether placed in packages at the rail point of origin, of the shipment or at points other than the rail point of [fol. 6] origin, in lieu of the provisions under the present regulations of a tolerance of 5 per cent on eggs other than those rehandled and repacked at the point of origin of the rail shipment, with no tolerance as to the latter.

The requirements under the present regulations that shippers must note on the shipping order and bill of lading the character of the shipment, namely, whether current receipts, graded, rehandled and repacked, or storage packed, and the definitions of those descriptions are eliminated in the proposed regulations. Respondents take the position that the physical condition of the eggs at the time they are offered for transportation, rather than specific descriptions, should be the basis of the regulations governing claims incident to such transportation. The proposed regulations are designed to accomplish needed changes in the present regulations based upon evidence obtained during the course of the investigation in the title proceeding.

Respondents take the position that they are not attempting by the proposed regulations to limit carrier liability, in that they are directed against losses due to the inherent nature of shell eggs rather than against losses caused by the carriers; and that the proposed regulations merely establish a means to determine the amount of damage existing at the time the shipment is received by the carrier and the amount of damage resulting solely during transportation because of the inherent nature of the shipment.

The prior, present, and proposed regulations, respectively, are shown in appendices A, B, and C hereto.

Eggs are graded according to size, color, interior quality and shell condition. The grades as to size are determined by weight, expressed in ounces per dozen, and are classified as jumbo, extra large, large, medium and small. Colors are designated as white, brown and mixed. Interior quality is indicated by designations AA, A, B, and C. The factors considered in shell condition are shape, cleanliness, and soundness of structure. Shell structure defects are described as check, blind check, crown check, stained or dirty, and loss, and are of primary importance in these proceedings.

The term "current receipts" is used to describe run-of-the-nest eggs as received at the farms, ranches and packing plants, before candling, grading, segregation of damaged eggs, and repacking. Such eggs contain every variety of size, color and grade, as well as a proportion of checked, broken, cracked, leakers, stained, and dirty eggs. Protestants take the position that such eggs are not shipped commercially, particularly to the New York market.

The terms "rehandled and repacked", and "storage packed", as defined in the present regulations, apply only to eggs which have been examined, sorted, and repacked at the point of origin of the rail shipment in new standard cases, with new flats, fillers, and cushions. The rehandling and repacking may be for the purpose of segregating the eggs as to size, color, quality, cleanliness, and condition. Commercially the term rehandled and repacked applies to eggs which have been classified solely by observation but not by candling. But the term storage packed applies to eggs which are candled generally for quality, grading, [fol. 7] blind checks, and other shell defects not visible to the naked eye. This term is commonly used by the trade to indicate that the eggs have been carefully graded for quality, condition, and cleanliness.

The term "graded" as used in respondents' present regulations is coupled with current receipts, and includes all eggs except those which are rehandled, repacked, graded, and sorted at the rail point of origin of the ship-

ment, and from which all broken, cracked, checked, stained and leaky eggs have been removed. That description was in response to the request of shippers who did not desire to describe their eggs as current receipts. In recent years the trend has been for farmers to sell their eggs on a graded rather than on a current receipts basis. Grading includes all operations necessary to classify fully the quality in any given lot of eggs. As used in the present regulations the term "graded" does not necessarily denote the commerical grade of eggs.

The term "checked" applies to eggs with small cracks in the shells but in which the shell membrane is not broken, and as a result there is no leakage. The check occurs after the egg is laid and cannot readily be detected by observation alone. In many instances a recent or new check is almost indiscernible. Most checks are, however, detected in candling, because in that process the candlers handle individual eggs and click them together. If the check is not recent it is readily visible to the naked eye, because there is an apparent widening of the crack as a result of the absorption therein of moisture. A "blind check" is a shell defect which occurs before the egg is laid and which has acquired a new coating of shell material over the defective part. Such defects are discernible only by candling. Obviously the trade uses the term blind check to include also those checks which can be detected by clicking but not by minute observation. Checked eggs are weak in their structure and defective, but blind checks may be included in storage packed eggs.

The term "crown check" applies to an indentation in the top of the egg as packed. Eggs are always packed vertically with the large end up. That end contains an air cell between the shell and the membrane. If elongated eggs are packed, and there is a jar from above or the case is walked on after it is loaded in a car crown checks would ordinarily occur. Protestants state that this type of damage is not proportionately large, in that elongated eggs are not being shipped commercially. The very large or so-called "jumbo" sized eggs when shipped are packed in special cases. A crown check does not necessarily cause a leaker.

Stained eggs are those on which the shell is stained or soiled from contact with broken or leaking eggs. Specifically they consist of eggs with no adhering dirt and with no more than a combined total of one-eighth of the shell surface stained or soiled. Dirty eggs are those with adhering dirt, or with more than one-eighth of the shell surface stained or soiled. Leakers are eggs on which the shells and membranes are broken to the extent that the contents thereof exude. Eggs described as "loss" are those which are inedible because of being broken, contaminated, or containing blood spots or other foreign matter.

[fol. 8] In the process of packing all checked, cracked, leaky, stained and dirty eggs, and those containing blood spots or other interior defects are removed.

Except in rare instances, eggs are not examined by the railroads for concealed damage at point of origin. Without considering such damage a bill of lading indicating that the shipment is in good order is given to the shipper. Upon arrival at destination all damage found by inspection is presumed to have occurred in transit. As a practical matter the inspection report of the Railroad Perishable Inspection Agency, hereinafter referred to as the inspection agency, is almost the equivalent of a draft against the carrier. Under this method of settling claims the railroads are practically obligated to pay for all damage to eggs found at destination, even if the shipment contained damaged eggs at the time it was delivered to the railroad at point of origin.

In the inspection at destination the consignee's representative examines every egg in the cases disclosing damage. Stained, leaky, or cracked eggs are removed and repacked into other cases containing similarly damaged eggs. Completely damaged eggs are replaced by good ones. In all such repacked cases new fillers and flats are furnished by the consignee. When the damage claim is filed it includes the cost of labor and materials used in repacking the eggs in addition to the cost of the damage. Approximately 25 percent of the total amount claimed for damage to eggs is apportioned to labor and materials. The cost of lifting the lids of the cases in a bad order car is not allowed in respect of claims for damage.

Claims for damage to shipments of shell eggs by rail

have reached substantial amounts during the past decade and longer. Those claims accrue principally in connection with shipments to destinations in trunk-line and New England territories. Generally there has been no increase in the damage claims on shell eggs moved by rail to other territories such as the South, the Southwest, and the Pacific coast. The damage claims on shipments to New York, to which the greater part of the evidence in these proceedings was directed, exceed those to any other point in the country. But large claims also accrue on shipments to certain points in eastern seaboard territory such as Baltimore, Md., Newark, N. J., Philadelphia and other points.

The following table shows for the year 1940 through 1949, the number of cases of shell eggs delivered at New York; those figures restated in carloads on the basis of 600 cases per car, except in 1949, when a basis of 480 cases was used; the number of claims filed; the total amount of such claims; and the average amount per car handled and per claim.

[fol. 9]

Year	Number of cases	Number of cars	Number of claims	Amount	Average of claims per car	Average of claims per claim
1940	4,552,143	7,586	2,116	$71,652	$ 9.44	$33.86
1941	4,072,916	6,788	1,965	59,889	8.82	30.48
1942	8,543,986	5,906	2,599	111,469	18.87	42.89
1943	4,105,083	6,841	3,744	302,875	44.27	80.89
1944	3,776,708	6,294	3,907	475,714	75.58	121.75
1945	5,900,090	9,833	(a)	(a)	(a)	(a)
1946	5,520,299	9,200	8,257	1,577,671	171.48	191.07
1947	4,568,309	7,616	6,911	1,505,472	197.67	217.83
1948b	3,204,027	5,341	3,808	871,441	163.16	228.84
1949b	1,273,922	2,828	2,072	491,542	173.81	237.23

(a) Information not available.
(b) Figures shown apply only in connection with the first 10 months of those years.

The average amount of the claims filed on shell eggs to New York has increased from $30.48 in 1941 to $237.23 in 1949. A somewhat similar situation is reflected in the claim per car, which was $8.82 in 1941, increased progressively to $197.67 in 1947, decreased to $163.16 in 1948, and again increased to $173.81 in 1949. The volume of movement was highest in 1945 when the equivalent of 9,833 carloads on the basis of 600 cases per car was terminated.

The number and amount of the damage claims are not directly related to the shipments terminated in the same period because of the interval between the time of delivery of a shipment and the time the claim thereon was paid. Claims may be filed against the carrier within 9 months after the date of delivery of the shipment, and such claims

may not be paid for a considerable period thereafter. While the normal period for the carriers' investigations and payments of a claim is about 4 months the record discloses that certain claims have been paid several years after the dates of delivery of the shipments.

The following table, compiled from a study made by respondents, shows the carloads of shell eggs delivered at New York, Baltimore, Philadelphia, and Boston during 1947, the number those on which claims were filed, the percent the shipments containing damaged eggs were of the entire shipments, the revenue on the total shipments, the amount of the claims paid on the specific cars indicated, the percentage such claims were of the total revenue, and the average claim payments per claim car and per car shipped.

[fol. 10]

	New York	Philadelphia	Baltimore	Boston	Totals
Total cars	7,638	667	690	661	9,656
Total claim cars	5,044	325	114	176	5,659
Percent claim cars are of the total cars	66	48.7	16.5	26.6	58.6
Total freight charges	$2,638,905	$280,590	$262,332	$276,143	$3,456,960
Total claim payments	$1,332,908	$ 32,741	$ 41,386	$ 33,590	$1,440,625
Percent claim payments are of total revenue	50.5	11.7	15.8	12.2	41.7
Claim payments					
Per claim car	$264.26	$100.74	$363.04	$190.85	$254.87
Per car shipped	174.51	49.05	59.98	50.82	149.10

* Only payment claims for 10 months.

It will be observed that more than 50 percent of the revenue accruing on shipments of shell eggs to New York in 1947 was paid in damage claims on those shipments. On such traffic respondents actually retained less than one half of the gross revenue to cover the expenses of the transportation and the contribution of such traffic to the overhead burden. The study clearly portrays the severity of the damage claims on shipments of shell eggs to New York. The claim payments are related specifically to the shipments in connection with which the damage occurred. As compared with New York the claim payments for damage on shipments to Philadelphia, Boston, and Baltimore ranged from 11.7 to 15.8 percent of the total revenue on the egg traffic to these points. The aggregate claims at the three latter points were slightly in excess of $100,000. It will be noted, however, that the claim ($363.04) per car containing damaged eggs was higher on shipments to Baltimore than to any of the other points indicated.

By 1950 the situation had changed to a certain extent. During the first half of that year only 701 carloads of shell eggs were delivered at New York on which the total freight charges were $270,994.16. On 334 of these shipments no damage claims were filed, but on the remaining 367, on which the revenue was $151,061.28, respondents expect to approve damage claims of $73,561.80, 27.1 percent of the total revenue. These shipments moved under the present regulations which provide for a tolerance of 5 percent on all eggs, other than those rehandled and repacked at point of origin of the rail shipment.

The following table is an analysis of the damage found in the cars included in the next preceding table, indicating the number of damaged cases (fiber or wooden), the character of the damage and the percentages thereof.

[fol. 11]

	New York	Philadelphia	Baltimore	Boston*	Total
Total cases damaged	875,715	15,006	11,796	9,176	911,673
Fiber	446,869	9,794	2,130	3,348	462,141
Wooden	428,846	5,212	9,666	5,828	449,552
Types of damage (in dozens)					
Broken	1,172,376	26,156	41,264	24,354	1,264,150
Leakers	260,154	12,869	120	13,019	286,162
Cracked	757,201	16,037	64,942	29,682	867,862
Stained	989,272	14,638	2,045	4,166	1,010,121
Total (dozens)	3,179,003	69,700	108,371	71,221	3,428,295
Percentages of damage					
Broken	36.9	37.5	38.1	34.2	36.9
Leakers	8.2	18.5	0.1	18.3	8.3
Cracked	23.8	23.0	59.9	41.7	25.3
Stained	31.1	21.0	1.9	5.8	29.5

* Covers only 10 months.

Generally there is little difference between fiber and wooden cases insofar as damages are concerned. There is a marked variation, however, in this relation as to shipments to Baltimore, where out of 11,796 cases containing damaged eggs, 9,666 were wooden. Broken and leaking eggs approximate 45 percent of the total damaged. Damages of those types represent total loss while cracked and stained eggs are saleable at prices somewhat lower than those for sound eggs.

The following table compiled from an exhibit of record sets out the total carload loss and damage, the number of cars originated, the revenue therefrom, and the loss and damage per car and per $100 gross revenue on shipments of shell eggs, as compared with other commodities throughout the entire country in 1947.

Commodity	Carload loss and damage	Number of cars	Freight revenue	Loss and Damage per car	Loss and Damage per $100 revenue
Shell eggs	$2,243,655	26,800	$10,585,213	$83.72	$21.20
Melons	2,977,472	56,389	19,701,506	52.80	15.11
Sewer pipe etc.	1,029,425	52,589	7,822,128	19.57	13.16
Crockery and Earthenware	241,170	8,260	2,650,724	29.20	9.10
Furniture (new)	1,435,312	142,077	33,178,697	10.23	4.38
Grain	5,586,511	1,619,751	394,018,568	3.45	1.42
Meats, fresh and cured	1,388,274	407,144	122,500,635	3.41	1.13
Plumbers' goods	380,337	27,058	8,743,043	14.06	4.35

Damage claims on shell eggs are the highest for any commodity shown in the preceding table and are unusually high in relation to like claims on the other commodities. Claims payments in relation to the number of cars average $83.72 for the entire country. For the same year (1947) the corresponding figure for New York was $197.67. And where [fol. 12] the claims on shell eggs were directly related to the shipments which moved that year, they averaged $174.51 at New York, $59.98 at Baltimore, $50.82 at Boston and $49.09 at Philadelphia.

The following table shows the relation at New York of damaged cases of eggs to the total number of cases received, the number (in dozens) of damaged eggs and the percentage of damaged eggs to the total number delivered during 1947 to and including the first half of 1950.

Year	Cases received	Cases damaged Number	Cases damaged Percent	Dozens damaged Number	Dozens damaged Percent
1947	4,069,210	92,620	22.65	3,333,368	12.06
1948	2,882,527	543,251	18.85	1,741,788	10.69
1949	1,163,207	261,462	22.48	916,097	11.68
1950 *	279,488	55,180	19.74	191,150	11.55

* For the first half of 1950.

The relation of damaged cases to the total number delivered by rail remains fairly constant at about 20 percent. The relation of the actual damage to the total amount of the shell egg traffic approximates 11 per cent or slightly higher. This establishes that despite the lower traffic volume in the later years, the relative amount of damage to shipments of shell eggs remains about the same.

During the period 1939 to 1949 an average of about 7,189 million eggs a year were produced in the North Atlantic area which were sold through normal trade channels. Similar data in millions for other areas are 8,984 in the East North Central area, 12,698 in the West North Central area, 2,940 in the South Atlantic area, 6,119 in the South Central area,

and 4,321 in the West. Eggs are produced in substantial quantities in all sections of the country. The West North Central area is, however, the largest production area of the country. The relative increase in the production of eggs during the above period was highest in that area which comprises Iowa, Minnesota, Missouri, North Dakota, South Dakota, and Kansas. That area and Illinois and Wisconsin, in which the greater portion of rail shipments originate, ship eggs to all the principal markets.

Eggs are highly perishable and fragile. A certain amount of damage occurs to them during the grading and packing operations. The principal cause to which shell damage prior to rail transportation is attributable is the fragility of the commodity. Due to age eggs decompose and become inedible but there is no relation between the age of an egg and its susceptibility, because of fragility, to shell damage. Loading eggs in railroad cars also involves certain hazards but, where performed by skilled and competent labor, the risk of breakage in that operation because of the protection afforded by the containers, flats, and fillers is less than in grading and packing. Inspection of shipments at points of origin shows the nature and extent of such damage.

The accepted practice in loading is to measure as to the width and length of the interior of the car by placing one row crosswise from side to side, and another row lengthwise from bunker to bunker, thus ascertaining the exact number of cases the particular car can accommodate. Measuring the car in this manner makes it possible for the [fol. 13] loading supervisor to estimate accurately the amount of bracing necessary at the bunkers as well as at the center of the loads. Each row of cases is packed tightly until the loads at both ends of the car have reached the center where the necessary number of wooden bracings is used to keep the load from shifting.

The value of eggs has increased since 1940, and contributes to the substantial loss and damage claims. The cost of labor and materials used in reconditioning the damaged cases has also increased. Those factors, however, appear to be of relatively minor importance in view of the fact that damage claim payments have increased more than 1800

percent since 1939. In recent years the volume of egg shipments by rail has declined substantially, but the damage results per unit shipped has not improved to any marked degree. The following table shows the respective percentages of rail and truck receipts of shell eggs at 11 principal markets for the first half of each year, 1947 through 1950:

Markets	Receipts							
	Rail				Truck			
	1947	1948	1949	1950	1947	1948	1949	1950
	Percents				Percents			
New York, N. Y.	70	59	32	13	30	41	68	87
Chicago, Ill.	35	37	13	8	65	63	87	92
Philadelphia, Pa.	41	34	16	2	59	66	84	98
Boston, Mass.	38	39	24	2	62	61	76	98
San Francisco, Calif.	39	25	20	6	61	75	80	94
Los Angeles, Calif.	43	26	15	4	57	74	85	96
Baltimore, Md.	82	80	63	10	18	20	37	90
Atlanta, Ga.	29	10	8	1	71	90	92	99
Cincinnati, Ohio	11	4	1	0.1	89	96	99	99.9
Detroit, Mich.	7	8	3	2	93	92	97	98
New Orleans, La.	58	31	9	1	42	69	91	99
All 11 Markets	49	41	20	7	51	59	80	93

From the above it appears that the traffic is steadily being diverted from the railroads to the motor carriers. Obviously this is due to the fact that since the war the latter have not increased their rates to the same extent as the former. Moreover, motor carriers offer pickup and delivery service, less time in transit, and lower damage claims. The receipts of eggs at the markets instanced were slightly in excess of 6,000 carloads in 1949. During the first 9 months of 1950 all carloads of eggs originated amounted to only 3,261. This illustrates the rapid decline in the shipments of shell eggs by rail.

One of the factors entering into the question of claims for damage is the material, consisting of flats and fillers, used in packing the eggs in the cases. A flat is placed in the bottom of an egg case and a filler is placed over the flat. The flat contains depressions in which the small end of the egg rests. The fillers are crossed sections of fibreboard interlocked in such a way that 36 spaces are formed for the insertion of eggs. When the first filler is packed another flat and filler are placed over the first layer. In 1946 the height of the fillers was increased from 2.25 to 2.33 inches. The spaces in the fillers are 1.75 inches square.

[fol. 14] Tests conducted by the Department of Agriculture in 1946 and 1948 established that a larger percentage of eggs shipped during these periods were either too long or too wide for the standard-sized flats and fillers then in

use than was the case in 1917. The changes in the size and shape of eggs resulted from the breeding of chickens to produce larger eggs. The industry as a whole is now adopting the larger-sized fillers for commercial egg shipments.

The result of those tests indicated that the damages per case with the new type flat and filler averaged (in eggs) 0.2 crown checks, 2.6 checked on the sides, and 1.1 leaking from other than crown damage, as compared with crown checks of 1.4, other than crown checks 2.8, leakers from crown damage 0.4, and from other than crown damage 2.3 in connection with the old type flat and filler. This establishes that the new type flat and filler result in a reduction in the damage to eggs. The industry is now changing over to the new type inner materials and to cases of greater height.

In 1946, the railroads began extensive research relative to loss and damage claims on shell eggs. At New York all shipments were inspected upon arrival. Studies were undertaken to discover the cause of the damage and to develop ways of eliminating it. When inspections at destination identified points at which damaged shipments consistently originated, inspections were made at those points. Tests were made, using new and old loading practices. Buffing materials were tested to eliminate lengthwise slack. Cases of eggs were loaded in the cars lengthwise, crosswise, and in various combinations. Trial loadings were made in which an adhesive was used to bind the entire load into a solid unit to eliminate lengthwise shifting, but which would permit normal unloading. Rubber pads were used to cover the bunker walls of the car, thus providing a cushion to minimize shock at the ends of the load. This proved impractical because of the problem of returning the pads to the original points for reuse. Excelsior pads were tried as a substitute. In the test shipments, representative cases were inspected at origin and destination by the same inspector. The results were not satisfactory. No practical method of loading was discovered that could materially reduce the damage result at destination.

Respondents urge that they have done their utmost to eliminate the damages and that little, if any, improvement may be expected from better loading practices. The shippers and receivers are almost uniformly of the opinion that

much of the damage results from rough handling of the shipments by respondents. Under similar loading and packing practices prior to World War II damage to shipments of eggs was reasonably low. Shortages and quality of equipment, heavy volume of traffic, and inexperienced railroad operating personnel, contributed to the damage during the war and for some time thereafter. While many of these conditions have improved the damage to eggs to the East, particularly New York, has not declined to any great extent. On shipments to other areas claims for damage to eggs are considerably lower than those in trunk-line and New England territories. Respondents assert that receivers of eggs at other points are not so critical in their examination of inbound shipments of eggs as are the receivers in the East, particularly New York, and accept shipments which contain certain damage without filing claims.

The record does not support this assertion, but it establishes conclusively that the damage claims on shipments of [fol. 15] eggs to points in eastern seaboard territory, particularly New York, proportionately exceed in number and amount those at any other point in the country.

The possibility of collusion between the consignor and consignee with respect to claims for damage is extremely remote. All claims must be supported by a notation to that effect, on the paid freight bill and signed by the consignee and respondent's inspector. As recovery for damage is usually less than the cost of examining and reconditioning the cases, together with the value of the damaged contents, the consignee suffers some slight loss on each damaged shipment. The integrity of inspectors employed by the inspection agency, and who represent the carrier, is not questioned.

Protestants take the position that damage to eggs in transit is usually distinguishable from that which existed prior to rail transportation by the extent and location of the damage. They state that eggs damaged at the time of loading are scattered throughout the case and are not massed at any one point, but that damage occurring in transit, from impacts due to rough handling, is most severe at the outside and inside rows of the fillers where the eggs adjoin the end or side of the case, or its center partition.

They contend that such damage does not result from packing operations. This contention is highly problematical and overlooks the fact that mass damage may also occur during the moving of the cases from the packing plant to the railroad car, in the actual loading into the car, and as a result of the manner in which the cases are loaded and braced. The record in these proceedings establishes, however, that shippers use extreme care in preparing shipments of eggs. They desire good trade relationships, customer good will, and avoidance of the delay incident to the settlement of damage claims. As stated by a witness, his company desires to have sound eggs at destination rather than damage claims. Despite those desires the record establishes that all shipments contain damaged eggs when loaded at the rail point of origin.

The usual commercially accepted method of examining eggs is by candling. This process consists of placing the eggs before a candle lamp so that the contents may be seen and the eggs classified in accordance with certain fixed standards. There is, however, the possibility of human error in all candling, as well as packing processes.

There is keen competition between egg producers and shippers through the entire country. Hence, all egg-packing plants are operated in substantially the same manner and according to the same competitive standards. One large shipper with numerous egg-packing plants throughout the country issues uniform instructions to its egg packers to the effect that "no checked eggs are permissible" in any of the grades shipped. Despite the intention and desire of every egg-packer to achieve perfection, it is nevertheless true that, due to human error, the commercially sound shipment does contain some checked and some inedible eggs. Protestants admit that in grading and packing eggs absolute perfection is commercially impossible.

Approximately 10 per cent of the eggs produced throughout the entire country is inspected and graded under supervision of the United States Department of Agriculture. In this operation an adequate and representative sample of the [fol. 16] shipment is inspected. On carload lots the inspection covers 15 cases drawn at random. The graders examine 100 eggs out of each case. Each egg selected is usu-

ally inspected, candled, and graded. In examining eggs for shell damage no candling is done but the eggs are handled individually and clicked to discover any checks which may exist.

The Department made studies with respect to damage to shell eggs, the results of which were made a part of the record in these proceedings. The studies indicated that when eggs from the farm are delivered at the packing plant 5 per cent of them contain checks. Of this, 4 per cent existed when the eggs left the farm, and an additional 1 per cent developed in the movement to the plant. In addition, 12 per cent more consisted of stains and dirties. At the plant the eggs are reworked and packed. A careful inspection made of the eggs as they were loaded into 115 railroad cars in 1948 and 1949 at points in the midwestern area disclosed that they contained an average of 1.4 stains and dirties, 1.9 checks, and 0.1 designated as loss. The 1.9 per cent checks was, however, found by candling and clicking, and could not be detected by the kind of inspection performed at New York. An examination of those identical shipments at destination showed respective damage of 2.1, 2.7, and 0.3 per cent, reflecting increases of 0.7, 0.8, and 0.2 per cent, respectively, incident to the movement in transit. Similar inspection in 1948, of 737 carloads of eggs loaded at origin points throughout the entire country, showed an average of stains and dirties of 1.8, checks of 1.9, and loss of 0.2 per cent. The result of these inspections indicates an average damage of 3.4 per cent at origin and 5.1 per cent at destination. The record establishes that this typifies the character of eggs which are loaded into railroad cars at points of origin. It also establishes that there is a normal expectancy of shell damage in every car loaded with eggs, and that it is at least impractical to load a perfect car.

Studies submitted by respondents in respect of inspections made by them of shipments of eggs at point of origin indicate that there is shell damage in every car irrespective of whether the eggs are handled and repacked at rail point of shipment or are trucked to that point. They take the position that such shell damage prior to rail transportation is attributable to the fragile nature of the commodity, the candling and repacking operations, and the handling of the

packed egg cases into freight cars. For example, surveys made by respondents in 1947 and 1948, of 126 shipments of eggs from Indiana, and less than 100 shipments from Iowa and Minnesota showed percentages of shell damage ranging from 2.2 to 3.2, 2.46 to 2.57, and 1.81 to 3.48 from these respective States. All of the shipments from Indiana were, however, rehandled and repacked at points other than the rail points of origin of the shipments. An inspection by the Western Weighing & Inspection Bureau of 59 shipments of eggs from numerous points in Iowa, and one from Kasson, Minn., during the period April 19 to June 30, 1949, showed broken and checked eggs ranging from 0.93 to 7.26, and averaging 2.61 per cent. The record indicates that checked, stained, dirty, or broken eggs are not intentionally packed in any shipment. Occasionally, however, to load a car unskilled itinerant labor is used with apparently no previous training and with no supervision on the part of certain, but not all, shippers in promoting careful and proper loading. Checks develop in any oil dip processing of eggs, and eggs are also broken in the process of affixing the lids on the cases.

[fol. 17] New York is the largest destination market in the country for eggs. It demands eggs of the best quality. Its distribution facilities are so complete that carloads assembled from a variety of packing sources in so-called consolidated cars, as well as straight carloads from a single packing plant can be advantageously handled. New York is the only point, however, where all carloads of eggs are inspected by respondent upon arrival. This has been done for the past 25 years at least. It is the practice of the inspection agency to note the general condition of every car of eggs arriving at that point. There are sufficient inspectors available for this work. In addition to making a report of the general condition of the load the inspection agency representative, together with the consignee's representative, will make the 20-case, top layer joint inspection provided for in the governing regulations. If upon such inspection damage to the eggs is discovered the damaged cases may be set aside and repacked by the consignee at the expense of the carrier.

Receivers at New York make the inspection of the eggs by

their own employees. They also employ independent contractors for that purpose. The independent contractors pay their men on the basis of the number of hours worked as evidenced by the inspection agency slip that accompanies each claim. Certain cases show external signs of damage. When eggs are damaged the fillers in the case become wet. Receivers of eggs at New York could ask for inspection of all cases in the shipment if one checked egg was found in the top layer of any 20 cases. Certain receivers would not, however, request inspection of the entire shipment unless at least three damaged eggs were found in the top layer of a case.

In the repacking or reconditioning process eggs are transferred from a damaged case to a good case one whole layer (three dozen) at a time. In replacing the smashed and leaking eggs inspection to the next lower layer in the case is continued until a good layer is found. If, however, there is only one leaker in the top layer that egg is replaced and the case is put in the good order pile. In the inspection the lid must be removed completely from the case, no candling lamp is used and the eggs are not clicked. The inspection is merely visual.

With respect to the provision in the proposed regulations for the presentation by consignees making damage claims, of certificates of Federal or State inspection agencies as to the condition of the eggs at time of shipment, protestants take the position that in order correctly to determine the amount of transit damage a similar inspection should be made at point of destination, rather than the alleged less minute inspection now performed. It is contended that Federal or State inspection at point of origin, and the inspection at destination, such as New York, now performed, are made under entirely different conditions. As distinguished from the high degree of care exercised in the inspection at point of origin it is contended that the alleged cursory 20-case top-layer visual inspection at destination, combined with the reconditioning process, could not possibly discover all of the damaged eggs in a roughly-handled shipment.

The record shows that a Federal inspection of five shipments at New York, which had been previously inspected in the usual commercial manner upon arrival at that point,

showed additional damage of 1.72 per cent stains, and 2.2 [fol. 18] per cent checks. Similar Federal inspection at that point of another group of five shipments disclosed an average of 0.66 per cent stains and 2.9 per cent checks. Ten carloads of eggs from points in Iowa which were accepted as in good order by the consignee in New York, but which were later given a Federal inspection disclosed an average combined destination damage of 7.3 per cent stains, checks, and loss. From the same origins eight carloads were received in bad order. After these shipments had been reconditioned, Federal inspection thereof disclosed an average remaining damage of 7 per cent, combined stains, checks, and loss. On behalf of the shipper of those 18 carloads it was testified that the eggs shipped by it are received, candled, packed, and shipped in accordance with the same methods used by other egg packers, and that no checked eggs are ever knowingly packed. The eggs in those shipments were loaded at origin directly from the packing plant into the rail car. Similar evidence was adduced as to other shipments.

The record does not indicate the handling received by those particular shipments after they were delivered to the consignees. It does indicate, however, based on the number and amount of claims, that the inspection of shipments of eggs arriving at New York is being performed with a view to detecting all damaged eggs. Claims in amounts exceeding 50 per cent of the revenue on the entire egg traffic to New York in 1947 do not appear to be based on a cursory inspection.

The loss and damage to shell eggs experienced by the Military Department of the Government, particularly at New York, is substantially less than the average damage experienced by receivers of eggs generally at that point. From 1944 to 1946, inclusive, 2,519 carloads of eggs containing 1,511,400 cases were received at the New York Quartermaster Market Center. Of these, 304 carloads containing 181,201 cases were shown by notation upon the freight receipt to be damaged. Upon final settlement, however, with the carriers only 9,483 cases were rejected. There was one claim car out of every eight cars received, one case reported damaged out of every 19, and only one case out of

every 159 was rejected and claim made for damage, as compared with about nine claim cars out of every 10 cars received by other egg dealers of New York in 1947. As shipments of eggs to the Military Departments move in the same train as do shipments to other receivers of eggs in the New York area, it is obvious that when loaded at points of origin the eggs to the former either (1) contain less shell defects than do those to the latter, or (2) the Military Departments accept as in good order, and on which no damage claims are filed, eggs containing shell defects of the same character and to the same approximate extent as do those in respect of which damage claims are filed by receivers of eggs generally at that point.

Eggs are shipped in refrigerator cars. A company at Omaha, Nebr., takes the position that damage to eggs in transit results from the use of old equipment. It stated that 38 cars in respect of which it had damage claims were built during the period 1917 to 1931, inclusive. This company ships 85 to 100 carloads annually to New York for export only, on which there have been no claims for damage. The eggs are packed in wooden cases and strapped. The bracing in the cars is the same as is used in connection with domestic shipments.

[fol. 19] Swift & Company has about 80 dairy and poultry plants throughout the country, principally in western trunk-line territory, at which it collects, repacks, and resells eggs. Those shipped from western trunk-line plants are marketed principally in trunk-line and New England territories. Eggs are transported to Swift's plants by farmers in their own equipment or by Swift's trucks, from an area extending from 100 to 150 miles. Those eggs are normally described as current receipts. After being delivered at the various plants, the eggs are candled and packed according to grade into cases. The broken, cracked, or checked eggs are removed. New wood and fiber cases fillers, and flats are used. At certain of its plants all egg shipments are subject to grading by the Department of Agriculture. All eggs shipped by Swift are rehandled and repacked either at the origin of the rail shipment or at a point beyond whence they are trucked to the point of rail shipment.

In 1948, Swift shipped 274 carloads of eggs to the New York area. Of these, 51 contained eggs damaged in transit, on which the damage per car averaged $305.36. During that year Swift shipped 1,696 carloads of eggs to other points. Of these, 245 contained eggs damaged in transit, on which the claims per car averaged $186.80. In 1949, Swift shipped 246 carloads of eggs to points on the Pacific coast, on only five of which claims were filed. The damage claims on four averaged $29.78 per car. The other car on which the claim was $1,678.96, had been wrecked. On shipments of eggs Swift places placards reading "Eggs handle carefully" on the sides and ends of the car. Other packing companies grade, pack, and load eggs in the same manner as Swift does.

In 1948, and during the preceding decade, Armour & Company shipped about 50 percent of its eggs to trunk-line and New England territories. Approximately 90 percent of Armour's claims for damage to eggs are on shipments to those territories, principally the New York metropolitan area. This company's witness takes the position that the principal cause of damage at New York is the car-float service across the North River from the New Jersey side.

The Pacific Dairy and Poultry Association and the Public Service Commission of Utah take the position that respondents have failed to justify the present and suspended rules; that these rules are *per se* unlawful whether applied at New York or elsewhere because they constitute a limitation on respondents' liability in violation of section 20 (11) of the Interstate Commerce Act; and that no condition of abnormal damage to shell eggs in transit has been shown with respect to shipments to points in western territory or to Pacific coast markets.

California is a deficit area in production with respect to the amount of eggs consumed. In 1949, 2,371,187 cases of eggs were received in Los Angeles and San Francisco, Calif. Of these, 1,579,257 cases (66 percent) originated in California, the remaining 24 percent originated in States east thereof to and including Illinois, and in other Pacific coast States.

Of the total receipts of eggs at Los Angeles truck receipts were 39 percent in 1945, and 90 percent in 1949. At San Francisco the respective percentages were 58 and 86. The

diversion to truck was caused by shorter time and less [fol. 20] damage in transit, prompt settlement of claims, and no necessity of trucking to or from railroad loading and unloading locations. Several members of the Association have received many cars with little or no damage. There is no evidence of excessive damage on shipments to Pacific coast territory. The principal damage occurs on shipments to New York and to other East coast cities. Shipments from Pacific coast territory to eastern territory are negligible. In 1948, New York received approximately 130 carloads of eggs from the mountain-Pacific States, mostly from Utah. Production in those States that year approximated 22,500 carloads. In the mountain-Pacific area eggs are graded according to United States Department of Agriculture regulations. Before packing all broken, checked and cracked eggs are removed.

Utah Poultry & Farmers Cooperative is composed of about 6,000 members. Prior to World War II the principal volume of production was shipped to the Pacific coast area. In 1949, 104 carloads (15 percent of the production) were shipped to eastern destinations, 43 carloads (6 percent) to the Southwest including Los Angeles, and 10 carloads (1 percent) to the Northwest. Of the 104 carloads to the East, only 33 carloads were delivered without damage, and on the 53 carloads to the Southwest and Northwest no damage was reported.

In the first half of 1950, 52 carloads were shipped from Utah to eastern destinations of which only 10 carloads were delivered without damage, but of 83 carloads shipped to the Pacific coast practically all were delivered in good order.

Many elements other than the actual value of the eggs enter into a damage claim. For instance, such claims include the loss incident to the damage, the labor charges and the materials used in reconditioning the cases, and the warehouse charges covering the extra expense of handling cases containing damaged eggs. In an analysis of 150 claims, picked currently as filed, respondents found that of the total amount claimed, $48,791.74, the portion allocated to damage to the eggs was $33,575.91 (69 percent); to labor $12,494.45 (26 percent); to material $2,280.32 (4.5 percent); and to warehouse charges $259.38 (0.5 percent).

Claims for damage to eggs throughout the entire country increased from approximately $110,000 in 1941 to an all time peak of $2,338,462 in 1947. Claim payments in the latter year were relatively greater for damage to eggs than to any other commodity. The shell egg carload traffic originated in 1947 was only 0.072 percent of all carload traffic while the claim payments for damage to eggs constituted 1.91 percent of all claim payments. Damage claims are not filed in instances where certain shocks to eggs, incident to rough transportation, such as breaking the air cell or loosening the yolk from the white, result in loss of grade or quality.

The claim payments on eggs in official territory were 2.32 percent in 1941, 7.02 percent in 1943, 16.16 percent in 1945, and 38.41 percent in 1947, of the aggregate revenue on this traffic. In the latter year the total claim payments in official territory amounted to $1,444,453, of which $1,332,907 resulted from damage to shipments to New York. The damage of record in cars inspected at New York since 1947 approximates 11 percent of the contents of the cases segregated by the consignee because of damage. During that [fol. 21] period, however, the number of cars of shell eggs moving to New York has declined substantially. There are large, though few claims for damage in respect of shipments of eggs to other points in official territory such as Biddeford, Maine, Elizabeth, N. J., Erie and Greensburg, Pa., Newark, N. J., Utica, N. Y., Worcester, Mass., and other points.

Although the tariff provisions under investigation apply, or are proposed to apply, nationwide the preponderance of the evidence presented in justification thereof related to the damage claims in official territory, particularly in the New York City area. The relative importance of the New York market is shown by the fact that it receives annually about six million cases, as compared with five million at Chicago, one million each at Philadelphia, Boston, San Francisco, Los Angeles, and Detroit, Mich., and one half million each at Baltimore, Atlanta, Ga., Cincinnati, Ohio, and New Orleans, La. Of the 26,800 carloads of eggs originated throughout the country in 1947, 7,638 (28.3 percent), were delivered in the New York City area, of which, 5,044 cars (66 percent) were in bad order.

The record indicates that in the transportation of eggs by motor truck the amount of shell damage is negligible. On behalf of a freight forwarder at Minneapolis, Minn., who receives approximately 3,000 cases of eggs a week by private and common carrier trucks from 200 producers in Minnesota, it was testified that the cases are inspected as they are unloaded and any cases containing damaged eggs refused. The witness estimated that in normal times approximately five or six cases out of the 3,000 are refused. Of 162,353 cases of eggs received by truck at the San Francisco Quartermaster Market Center from midwestern points during the period December 1948 to May 1949, only 653 cases (about 0.14 percent) were damaged or rejected. The receipt of eggs at destination without filing damage claims would depend largely upon the character of the inspection at that point as well as upon the condition of the eggs at point of origin.

Certain protestants intimate that the heavy loading of eggs during the war years was, to a certain extent, the cause of the unusually high amount of damage. On behalf of a concern at Omaha, Nebr., it was testified that:

> We checked the first 6 months of 1948 and found that we had moved 309 cars of eggs from our midwestern branches to various destinations throughout the United States and for export. Of these, 53 cars contained less than 600 cases out of which we had four claims with an average per car of $3.59, while from the remaining 256 cars containing 600 cases each, we had 34 claims with average per car of $24.95.

A witness on behalf of certain receivers at New York testified, however, that there are claims for damage on as many 400-case carloads as on 600-case carloads.

Protestants take the position that rough handling in transit is the most important single cause of damage to eggs; and that the large claims for such damage would not have been approved by the railroads unless they were satisfied as to the fact of railroad liability. A witness for consignee at New York testified that he had oportunity to observe the operation in the classification yards in New Jersey. On the side of certain cars there was a sign "do

[fol. 22] not hump," but he had seen some of those cars go over the hump in those yards.

With respect to protestants' argument that the present and proposed regulations contravene the provisions of section 20(11) of the Interstate Commerce Act, the respondents contend that there is no basis for such a position; and that the damage to the extent of the proposed tolerances are due to the inherent nature of the commodity. A carrier is liable for failure to transport safely goods entrusted to its care, unless the loss or damage was due to one of certain causes, such as act of God, the public enemy, the act of the shipper, or the nature of the goods. See *Chesapeake & Ohio Ry. Co.* v. *A. F. Thompson Mfg. Co.*, 270 U.S. 416.

The present and proposed regulations are not limitations of the carriers' liability in respect of damage to property transported by them. They constitute merely tariff rules and practices designed to relieve the carriers from paying claims for damages which are not attributable to their negligence but which result from the inherent nature of the commodity transported. Such inherent defects were recognized in No. 10012, wherein division 2 found a tolerance of 5 percent in respect of "current receipts eggs" not unreasonable or otherwise unlawful. The record herein establishes that there are inherent defects also in eggs other than so-called current receipts.

In *Crouch Grain Co.* v. *Atchison, T. & S. F. Ry. Co.*, 41 I.C.C. 7172 wherein it was alleged, among other things, that a tariff rule which provided for certain deductions in the adjustment of claims for loss allowances incident to the natural shrinkage of grain were, because the carriers sought to limit their liability, illegal in violation of section 20 of the act, the Commission said:

> There appears to be little or no merit in the contention that the rule violates the inhibition clause of the act against the limitation of liability, for the limitation is not against losses *caused by the carrier or its connections*, but rather against liability for losses due to the *inherent nature of the commodities themselves* and attributable to no human agency.

Certain tolerances have been adopted by the Department of Agriculture, and the egg trade, in grading eggs. Certain amounts and kinds of shell damage are permitted in each grade. For example in eggs graded AA, and A, 5 percent of shell damage, consisting of 0.5 percent leakers, and 4.5 percent checks or stains, is permitted. Somewhat similar tolerances are permitted by the Army of the United States. During rail transportation 18 percent of A quality eggs will be reduced to B quality, due to changes within the eggs. Shocks in transit, resulting from rough handling, cause broken air cells and loosened yolks. The resulting loss of interior quality is present in every damaged shipment. No claims are, however, filed for this type of damage in transit.

[fol. 23] Respondents take the position that the normal expectancy of damage to eggs which have been rehandled at origin prior to tender for rail transportation is over 3 percent, and that the normal expectancy of damage in transit due to the inherent nature of the eggs without negligence on the part of the railroad is approximately 1 percent. Under the proposed regulations the shipper is, however, afforded an opportunity of presenting an inspection certificate of Federal or State inspection agencies showing the extent of the physical damage to the eggs determined at the rail point of origin of the shipment immediately prior to tender for rail transportation to which would be added 1 percent for the estimated damage in transit. The total thus computed would be deducted from the claim against the railroad for the damage found to exist at destination. In this manner, the shippers are afforded an opportunity to have the exact amount of point of origin damage determined and given recognition.

Eggs containing checks, blind or visible, are to a certain extent in a damaged condition. In other words, the shells on those eggs are defective or cracked. These defects or cracks, unlike breaks or fractures in the bones of animate things, do not heal or knit with the passage of time. Any change in the condition of a defect or crack in an egg shell can result only in its enlargement, a healing or knitting thereof not being possible. The slightest movement in transportation may cause additional damage to such eggs.

Such damage cannot be imputed to the negligence of the carrier but rather to the inherent nature of the commodity. Even a slight enlargement of the check or defective part could, by a rupture or break in the shell membrane, result in a leaking egg. Such an egg causes additional damage, such as stains, to otherwise sound eggs in the same case.

On the record in these proceedings the tolerance of 5 percent in respect of all eggs, other than those described as rehandled and repacked, and storage packed eggs, processed at packing plants or storage warehouses at point of origin of the rail shipment, appears reasonable. The damage to such eggs for which respondents are not responsible averages that amount.

Under respondents' proposal tolerances of 4 percent would be allowed on eggs placed in packages at the rail point of origin, and 6 percent on shipments placed in packages at points other than the rail point of origin, subject to modification incident to certificates of Federal and State inspection agencies showing the amount of the physical damage.

As stated the present 5 percent tolerance on eggs not processed at the rail point of origin appears reasonable. The record also supports a finding that a tolerance of 3 percent would be reasonable on eggs processed at the rail point of origin.

[fol. 24] The Commission should find that the present 5 percent tolerance on eggs, other than those rehandled and repacked at the rail point of origin, is not shown to be unreasonable or otherwise unlawful. The Commission should further find that the proposed tolerances of 4 percent on eggs packed at the rail point of origin, and 6 percent on eggs packed at points other than the rail point of origin have not been justified, but that tolerances of 3 and 5 percent, respectively, would be reasonable. Respondents should be directed to cancel the suspended schedules without prejudice to the filing of new schedules in conformity with the findings herein.

An appropriate order discontinuing the proceedings should be entered.

[fol. 25] APPENDIX A

The following are the tariff provisions in effect immediately prior to July 24, 1948.

Note 5—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1.—Shippers of eggs shall be required to note on shipping order and bill of lading:

(a) The character of the shipment, whether current receipts, rehandled current receipts, rehandled and repacked eggs, see paragraph (d), storage packed eggs, checks or dirties, and the number of cases of each.

(b) The particular identification marks appearing on cases containing different grades as for example:

400 cases storage packed (N/M), no mark
40 cases dirty eggs, marked "D"
10 cases checked or cracked eggs, marked "C"
If no marks, billing must so read.

(c) Number of cases separately that are not packed with full thirty dozen and extent of shortage.

(d) Rehandled and repacked eggs consist of eggs rehandled and repacked in new standard cases with new flats, fillers and cushions, in accordance with classification requirements, except as provided in Note 10, item 14602.

Section 2.—Upon arrival at destinations of shipments of eggs in CL or LCL lots, consignee or his authorized representative shall have the privilege before eggs leave the possession of carrier and under supervision of carrier's representative of lifting the lids of twenty (20) cases in any carload or of twenty-five percent (25%), with a maximum of twenty (20) cases, of the cases of any LCL lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs.

If such examination shows no evidence of damage,

it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

[fol. 26] Section 3.—Where the carrier determines that space at the carrier's station does not admit of the examination there of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. Upon demand made therefor at the time of delivery, even though space does so admit, the carrier may at its option elect to have the examination at the warehouse of the consignee or such other place as the two may agree. Such inspection shall be a joint inspection and shall be made within twenty-four (24) hours after delivery of the eggs by the carrier. The carrier shall have the right in such instances to mark the cases so delivered or examined for the purpose of identification. No cases shall be opened until both parties are present. However, where carload shipments are consigned to cold storage warehouses or packing plants, inspection may be made at such plants but only in presence of authorized representatives of carrier.

Section 4.—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint examination of the entire contents of the shipment to determine the damage from such causes, provided demand is made therefor within such time.

Section 5.—On consignments of eggs where order bills of lading are indorsed to allow inspection, such

inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6.—In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability.

Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.

Section 7.—In adjustment of claims for damage, the notation made on paid freight receipt or other document by joint inspectors shall be considered conclusive as to extent of damage. Any investigation necessary for purpose of determining carrier's liability for such damage shall be made promptly and claims shall be settled upon their merits.

[fol. 27] No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier. If, by reconditioning any damaged case or contents, there shall result an enhanced value because of such reconditioning of such case or contents, such increased value shall be credited to the claims.

[fol. 28] APPENDIX B

The following are the present tariff provisions under investigation in the captioned proceeding:

Note 5.—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1.—Shippers of eggs shall be required to note on shipping order and bill of lading:

(1) The character of the shipment, whether current receipts or graded, rehandled and repacked eggs, storage packed eggs, see paragraphs (a), (b) and (c), checks or dirties, and the number of cases of each.

(2) The particular identification mark appearing on cases containing different grade as for example:

400 cases storage packed (N/M), no mark
40 cases dirty eggs marked "D"
10 cases checked or cracked eggs, marked "C"
If no marks, billing must so read.

(3) Number of cases separately that are not packed with full thirty dozen and extent of shortage.

(a) The term "rehandled and repacked" shall apply only to eggs that have been rehandled and repacked *at point of origin of the rail shipment* in the new standard cases with new flats, fillers and cushions, in accordance with Classification requirements, except as provided in Note 10, item 14602. Broken, cracked, checked eggs and eggs strained from broken eggs shall be removed in such rehandling and repacking. Eggs that have been shipped by rail as "rehandled and repacked" eggs under the provisions of this paragraph and delivered by rail to a storage warehouse will, if reshipped by rail from the storage warehouse, be considered as "rehandled and repacked" eggs.

(b) The term "storage packed eggs" shall apply only to eggs that have been graded and sorted at packing plants or storage warehouses located *at point of origin of the rail shipment* after the removal of broken, cracked, checked eggs, and eggs strained from broken eggs. The graded and sorted eggs shall

be packed in new standard cases with new flats, fillers and cushions, in accordance with Classification requirements, except as provided in Note 10, item 14602. Eggs that have been shipped by rail as "storage packed eggs" under the provisions of this paragraph and delivered by rail to a storage warehouse will, if reshipped by rail from the storage warehouse, be considered as "storage packed eggs."

(c) The terms "current receipts" or "graded" shall apply to eggs not complying with the provisions of paragraphs (a) and (b). (The terms "current receipts" or "graded" when used on a shipping order and bill of lading do not necessarily denote the commercial grade of the eggs.)

[fol. 29] Section 2.—(a) Upon arrival at destinations of shipments of "rehandled and repacked" eggs or "storage packed" eggs in CL or LCL lots, consignee or his authorized representative shall have the privilege before eggs leave the possession of carrier and under the supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload or of twenty-five percent (25%) with a maximum of twenty (20) cases, of the cases of any LCL lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs. A case showing external evidence of damaged eggs within that case not disclosed by top layer inspection may be segregated for the purpose of ascertaining the actual damage in that case.

If such examination shows no evidence of damage it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

(b) Upon arrival at destinations of shipments of "current receipts" or "graded" eggs in CL or LCL lots, consignee or his authorized representative shall have the privilege before eggs leave the possession of carrier and under supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload, or of twenty-five percent (25%) with a maximum of twenty (20) cases, of the cases of any LCL lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs. A case showing external evidence of damaged eggs within that case not disclosed by top layer inspection may be segregated for the purpose of ascertaining the actual damage in that case.

If such examination shows five percent (5%) or less damage, it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses more than five percent (5%) damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing more than five percent (5%) damage. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

[fol. 30] Section 3.—Where the carrier determines that space at the carrier's station does not admit of the examination there of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. Upon demand made therefor at the time of delivery, even though space does so admit, the carrier may at its option elect to have the examination at the warehouse of the consignee or such other place as the two may agree. Such inspection shall be a joint inspection and shall be made within twenty-four (24) hours after delivery of the eggs by the carrier,

The carrier shall have the right in such instances to mark the cases so delivered or examined for the purpose of identification. No cases shall be opened until both parties are present. However, where carload shipments are consigned to cold storage warehouses or packing plants, inspection may be made at such plants but only in presence of authorized representatives of carrier.

Section 4.—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four hours (24) after delivery, the consignee shall be entitled to a joint examination of the entire contents of the shipment to determine the damage from such causes, provided demand is made therefor within such time.

Section 5.—On consignments of eggs where order bills of lading are endorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6.—In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability.

Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.

Section 7.—In adjustment of claims for damage, the notation made on paid freight receipt or other document by joint inspectors shall be considered conclusive as to extent of damage. Any investigation necessary for purpose of determining carrier's liability for such damage shall be made promptly and claims shall be settled upon their merits.

No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier's

liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier. If, by reconditioning any damaged case or contents, there shall result an enhanced value because of such reconditioning of such case or contents, such increased value shall be credited to the claim.

[fol. 31] APPENDIX C

The following tariff provisions are under suspension in Docket No. I. & S. 5792:

Note 5.—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1.—Shippers of eggs must place the following information on shipping order and bill of lading:

(a) Total number of packages.

(b) Type of package (wooden or fibreboard) and number of each type and capacity.

(c) Number of packages that do not contain full number of eggs for which the package is intended, and the actual extent of such shortage.

(d) Number of packages entirely containing checked, cracked, stained or dirty eggs.

Section 2.—Upon arrival of shipment at point of delivery, the consignee or his authorized representative shall have the privilege of opening each package, at no expense to the carrier (see Section 8), and of initially examining the contents thereof; provided, however, on notice by the carrier, such initial examination shall be in the presence of the carrier's representative. If any package contains eggs having shell damage for which the carriers may be deemed responsible, the contents of such package shall be jointly inspected by the consignee and the carrier, or their authorized representatives. Any damage to the eggs shall be jointly recorded by the consignee and the carrier, or their authorized

representatives, and such joint record shall be conclusive as to the nature and extent of damage.

Section 3.—The examination by consignee and joint inspection by consignee and carrier, provided for in Section 2 of this Note, shall be made before the shipment is removed from carrier's possession, except where the carrier agrees that the joint examination, or both the examination and joint inspection, may be made elsewhere and within a specified period of time after actual delivery of the shipment by the carrier into possession of consignee or his designated agent. The carrier shall have the right to place identifying marks upon any package to be inspected.

Section 4.—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint inspection of the entire contents of the shipment to determine the damage from such causes.

Section 5. On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

[fols. 32-33] Section 6.—On eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 4% of the contents of the packages containing damaged eggs. Where damage exceeds 4%, claims shall be allowed for all damage in excess of 4% if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 3%; the percentage of actual damage as shown on such certificates, plus 1% shall be used in lieu of 4% specified in this Section.

Section 7. On eggs placed in packages at points other than the rail point of origin, no claim shall be

allowed where the physical damage to the eggs at destination does not exceed 6% of the contents of the packages containing damaged eggs. Where damage exceeds 6% claims shall be allowed in excess of 6%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 5%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 6% specified in this Section.

Section 8.—No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier liability, actual and necessary charges incurred for labor and material, as verified by carrier representative, in reconditioning each package in which verified damage exceeds the percentages stated or otherwise provided for in Section 6 or Section 7 of this Note, whichever is applicable, shall be borne by the carrier. If, by reconditioning any damaged package or contents, there shall result an enhanced value because of such reconditioning of such package or contents, such increased value shall be credited to the claim.

Section 9.—Where the application of percentages stated or otherwise provided for in Section 6 or Section 7 of this Note result in fractions of one egg, such fractions shall be increased to the next whole number.

[fol. 34]

EXHIBIT 1

WITNESS: Murphy

DOCKET NO. 30030

SPECIAL REGULATIONS—EGGS

Comparison of Shell Egg Shipments Received by Rail at New York, N. Y. With Loss and Damage Claims Thereon

	(A)	(B)		(C)			(C)		
	Rail Receipts			Loss and Damage Claims					
Year	No. Cases	No. Cars	Percent	No.	Percent	Amount	Percent	Average Per Car Handled	Average Per Claim
1940	4,552,143	7586	100.0	2116	100.0	$ 71,652	100.0	$ 9.44	$33.86
1941	4,072,916	6788	89.4	1965	92.8	59,899	83.6	8.82	30.48
1942	3,543,986	5906	77.8	2599	122.8	111,469	155.5	18.87	42.89
1943	4,105,083	6841	90.1	3744	176.9	302,875	422.7	44.27	80.89
1944	3,776,708	6294	82.9	3907	184.6	475,714	663.9	75.58	121.75
1945	5,900,090	9833	129.6	*	*	*	*	*	*
1946	5,520,299	9200	121.3	8257	390.2	1,577,671	2201.8	171.48	191.07
1947	4,568,309	7616	100.4	6911	326.6	1,505,472	2100.0	197.67	217.83
1948	3,497,355	5828	76.8	4205	198.7	969,211	1352.7	166.30	230.49
First 4 mos. 1949	600,579	1001	.....	922	.....	191,985	.....	191.79	208.22

Source: (A) U. S. Department of Agriculture; Production & Marketing Division "Dairy and Poultry Market Statistics" for the Periods shown.
(B) Computed on basis of 600 cases per car.
(C) Freight claim statistics of Railroad Perishable Inspection Agency.

* Statistics not available.

[fol. 35]

EXHIBIT 2

WITNESS: Murphy

DOCKET NO. 30030.

SPECIAL REGULATIONS—EGGS

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Comparison of Shell Egg Shipments Received by Rail at New York, N. Y. During 1947 with Loss and Damage Claims Thereon.

	(A)	(B)	(C)	
			Loss and Damage Claims	
1947	No. Cases	No. Cars	No.	Amount
January	439,156	732	658	$154,541.45
February	408,335	685	451	92,305.05
March	509,915	850	614	121,152.99
April	581,115	968	541	98,417.23
May	542,772	904	566	105,666.97
June	467,811	779	505	94,547.26
July	390,505	651	535	97,689.29
August	298,204	497	534	130,563.31
September	242,488	404	776	152,952.67
October	213,336	355	647	164,048.96
November	188,905	315	624	165,957.20
December	285,767	476	460	127,630.25
Totals	4,568,309	7,616	6,911	$1,505,472.63

Source: (A) Table 21, U. S. Dept. of Agriculture; Production and Marketing Adm., Dairy & Poultry Market Statistics—1947.

(B) Computed on basis of 600 cases per car.
(C) Freight claim statistics of Railroad Perishable Inspection Agency.

[fol. 36]

EXHIBIT 3

WITNESS: Murphy

DOCKET NO. 30030.

SPECIAL REGULATIONS—EGGS.

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Comparison of Shell Egg Shipments Received by Rail at New York, N. Y. During 1948 With Loss and Damage Claims Thereon.

	(A)	(B)	(C)	
			Loss and Damage Claims	
1948	No. Cases	No. Cars	No.	Amount
January	444,489	741	508	$140,269.83
February	336,425	562	436	114,734.09
March	413,428	689	530	94,335.58
April	406,125	677	333	64,365.73
May	388,900	648	333	62,228.26
June	388,807	648	413	80,948.50
July	271,993	453	376	83,000.39
August	181,641	303	164	62,604.66
September	213,312	355	429	97,212.14
October	158,907	265	286	71,751.33
November	126,812	211	228	56,574.12
December	166,516	278	169	41,195.80
Totals	3,497,355	5,830	4,205	$969,211.43

Source: (A) Mimeographed undated report of U. S. Dept. of Agriculture; Production and Marketing Administration; Dairy & Poultry Market News Service, 641 Washington St., New York, N. Y.
(B) Computed on basis of 600 cases per car:
(C) Freight Clain statistics of Railroad Perishable Inspection Agency.

[fol. 37]

EXHIBIT 4

WITNESS: Murphy

DOCKET NO. 30030.

SPECIAL REGULATIONS—EGGS

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Comparison of Shell Egg Shipments Received by Rail at New York, N. Y. During First 4 Months of 1949 With Loss and Damage Claims Thereon.

	(A)	(B)	(C)	
			Loss and Damage Claims	
1949	No. Cases	No. Cars	No.	Amount
January	208,515	348	192	$42,963.92
February	135,208	225	239	62,599.69
March	122,885	205	238	45,582.63
April	133,971	223	253	40,839.58
Totals	600,579	1,001	922	$191,985.82

Source: (A) Mimeographed monthly reports of U. S. Dept. of Agriculture, Production and Marketing Administration, Dairy & Poultry Market News Service, 641 Washington St., New York, N. Y.
(B) Computed on basis of 600 cases per car.
(C) Freight claim statistics of Railroad Perishable Inspection Agency.

[fol. 38]

EXHIBIT 5

WITNESS: Murphy

DOCKET NO. 30030.

SPECIAL REGULATIONS—EGGS

****

Comparison of Shell Egg Shipments Received by Rail at New York, N. Y. With Loss and Damage Claims Thereon for First 4 Months of 1947–1948–1949.

	(A)	(B)	(C) Loss and Damage Claims			
January to April, incl.	No. Cases	No. Cars	No.	Amount	Avg. Per Car Handled	Avg. Per Claim
1947	1,938,521	3,235	2,264	$466,416.72	$144.17	$206.01
1948	1,600,467	2,669	1,807	413,696.23	155.00	228.94
1949	600,579	1,001	922	191,985.82	191.79	208.22

Source: (A) Mimeographed monthly reports of U. S. Dept. of Agriculture, Production and Marketing Administration, Dairy & Poultry Market News Service, 641 Washington St., New York, N. Y.
(B) Computed on basis of 600 cases per car.
(C) Freight claim statistics of Railroad Perishable Inspection Agency.

[fol. 39]

EXHIBIT 6

WITNESS: Murphy

DOCKET NO, 30030.

SPECIAL REGULATIONS—EGGS

*****

"CIRCULAR NO. FCD-1342

e6476

ASSOCIATION OF AMERICAN RAILROADS

Operations and Maintenance Department
Freight Claim Division

Freight Loss & Damage, Carloadings and Revenue—1947
(U. S. Class 1 Carriers Only)

To the Members:

	Carload L. & D.	*No. Cars Originated	*Freight Revenue (C. L.)	L. & D. Per Car	L. & D. Per $100 Revenue
1. Grain	$ 5,586,511	1,619,751	$ 394,018,568	$ 3.45	$ 1.42
2. Flour & Other Mill Prod.	2,626,599	757,070	122,171,937	3.47	2.15
3. Frozen Foods	354,970	17,384	9,153,260	20.42	3.88
4. Fresh Fruits (Ex. Citrus)	4,715,862	238,820	90,381,486	19.75	5.22
5. Fresh Fruits (Citrus)	3,004,122	152,943	85,669,886	19.64	3.51
6. Melons	2,977,472	56,389	19,701,506	52.80	15.11
7. Fresh Vegetables	8,456,210	565,757	183,904,835	14.95	4.60
8. Other Agri'l Products	1,741,569	1,160,487	175,702,001	1.50	0.99
9. Live Stock	4,639,798	753,873	85,816,213	6.15	5.41
10. Fresh & Cured Meats	1,388,274	407,114	122,500,635	3.41	1.13
12. Eggs (in Shell)	2,243,655	26,800	10,585,213	83.72	21.20
13. Other Aninals & Products	705,733	192,851	60,254,440	3.66	1.17
14. Coal & Coke	2,091,913	9,682,063	1,288,291,238	0.22	0.16
15. Other Mine Products	868,289	5,474,726	584,442,963	0.16	0.15
16. Lumber & Forest Products	472,067	2,554,820	456,325,014	0.18	0.10
17. Petroleum Oils	419,625	1,713,154	276,755,581	0.24	0.15
18. Plumber's Goods	380,337	27,058	8,743,043	14.06	4.35
19. Sugar	1,155,427	140,581	46,455,213	8.22	2.49
20. Iron, Steel, etc.	1,103,695	2,891,982	700,460,381	0.38	0.16
21. Machinery & Boilers			(See Note)		
22. Stoves, Ranges, etc.	736,974	55,835	13,143,113	13.20	5.61
23. Brick, Bld'g. Tile, etc.	856,929	223,019	36,674,714	3.84	2.34
24. Sewer Pipe, etc.	1,029,425	52,589	7,822,128	19.57	13.16
25. Agri'l. Implements, etc.	143,391	85,751	25,825,572	1.67	0.56
26. Automobiles, Trucks, etc.	1,349,091	891,524	253,524,615	1.51	0.53
27. Furniture (New)	1,453,312	142,077	33,178,697	10.23	4.38
28. Paper (Newsprint)	536,300	38,110	27,281,536	14.07	1.97
29. Dry Goods			(See Note)		
30. Furnaces, Heaters, R. & Pts.	404,405	47,291	12,511,133	8.55	3.23
31. Canned Food Products	5,324,434	415,093	154,888,468	12.83	3.44
32. Tobacco, Manufactured	286,223	15,314	10,561,290	18.69	2.71
33. Glass & Glass Aticles	618,941	259,294	59,976,764	2.39	1.03
34. Crockery, Earthenware	241,170	8,260	2,650,724	29.20	9.10
35. Household Goods			(See Note)		
36. All Other Commodities	10,767,517	5,693,260	1,293,520,758	1.89	0.83
37. Ale, Wine, Beer, etc.	5,387,207	245,653	84,741,706	21.93	6.36
38. Enamel ware, Wash. Mach.			(See Note)		
39. Refrigerators	432,844	89,115	21,958,134	4.86	2.00
40. Freight Forwarder Traffic	5,160,033	271,163	127,197,296	19.03	4.06
All Less Carload Freight	38,538,638	6,072,547	522,384,515	6.35	7.38
Totals	$118,198,962	43,039,518	$7,409,174,576	$ 2.75	$ 1.60

NOTE: Included in Commodity item 36, as carloading revenue data therefor not shown separately in statistics of Interstate Commerce Commission.

* I. C. C. Commodity Statistics—Preliminary—subject to revision.

le 300-13
Chicago, July 23rd, 1948.

Respectfully,
G. C. Beauprie, Secretary"

[fol. 42]

EXHIBIT 9

WITNESS: Murphy

DOCKET NO. 30030.

SPECIAL REGULATIONS—EGGS

Shell Eggs Received at New York, N. Y. by Railroad and Truck.

	Total No. cases received	No. cases put into cold storage
1948		
January	728,945	58,674
February	534,278	80,618
March	742,155	138,545
April	761,141	278,130
May	640,712	271,970
June	640,403	181,495
July	447,352	110,873
August	353,105	40,885
September	363,048	64,701
October	351,415	26,200
November	350,380	12,121
December	453,907	23,467
Total	6,366,841	1,287,679
1949		
January	530,292	29,363
February	429,081	41,638
March	512,729	72,881
April	488,253	84,126
Total	1,960,355	228,008

Source: Mr. R. S. Smith, Local Representative, U. S. Department of Agriculture, Production & Marketing Administration, Market News Service, 641 Washington St., New York, N. Y.

[fol. 43] EXHIBIT No. 10

WITNESS NORTH

I. C. C. DOCKET No. 30030 SPECIAL REGULATIONS—EGGS

History of Special Regulations Governing Descriptions, Marks, Inspection and Delivery of Eggs, and the Handling of Claims Thereunder

Supplement No. 33 to Official Classification No. 44, Effective July 15, 1919

Special Regulations Governing Description, Marks, Inspection and Delivery of Eggs, and the Handling of Claims Thereunder

Rule 1.—Shippers of eggs shall be required to note on shipping order and bill of lading:

(a) The character of the shipment, whether Current Receipts, Rehandled Current Receipts, Rehandled and Repacked Eggs, see Note, Storage Packed Eggs, Checks or Dirties, and the number of cases of each.

(b) The particular identification mark appearing on cases containing different grades, as for example:

400 cases storage packed (N/M), no mark
40 cases dirty eggs, marked "D"
10 cases checked or cracked eggs, marked "C"
If no marks, billing must so read.

(c) Number of cases separately that are not packed with full thirty dozen and extent of shortage.

Note.—Rehandled and Repacked eggs consist of eggs rehandled and repacked in new standard cases with new flats, fillers and cushions, in accordance with classification requirements. Cases, fillers and flats shall be considered new and standard when in good condition and moving in direction of market from point first used.

Rule 2, Section 1.—Applicable at points other than Boston, New York and Philadelphia: Upon arrival at destinations of shipments of eggs in carload or less carload lots, consignee or his authorized representative shall have the privilege, before eggs leave the possession of carrier and

fol. [40]

EXHIBIT 7

WITNESS: Murphy

DOCKET NO. 30030.

SPECIAL REGULATIONS—EGGS

******

Comparison of (1947) National Rail Revenue and Claim Statistics of Shell Eggs With Those of New York, N. Y.

(A)

1947	National	Percent	New York, N. Y.	Percent
No. cars originated	26,800	100	(Delvd) 7,616 (B)	28.3
Freight revenue (C/L)	$10,585,213.	100	$3,008,091. (C)	28.3
Avg. revenue per car	$394.97		$394.97	
C/L Loss & Damage claims	$2,243,655.	100	$1,505,472. (D)	67.1
C/L Loss & Damage claims per car	$83.72	100	$197.67	236.0
C/L Loss & Damage claims per $100 of rail revenue	$21.20	100	$50.04	236.0

Source: (A) Association of American Railroads, Freight Claim Division Circular No. FCD–1342, July 23, 1948.
(B) Table 21, U. S. Dept. of Agriculture; Production & Marketing Admin., Dairy & Poultry Market Statistics 1947—car equivalent computed on basis of 600 cases per car.
(C) Pro-rata proportion of national rail revenue.
(D) Freight claim statistics of Railroad Perishable Inspection Agency.

[fol. 41]

EXHIBIT 8

WITNESS: Murphy

DOCKET NO. 30030.

SPECIAL REGULATIONS—EGGS

*****

Shell Egg Loss and Damage Claim Payments Approved by the Railroad Perishable Inspection Agency in 1947–1948.

District	No. Claims 1947	No. Claims 1948	Amounts Recommended 1947	Amounts Recommended 1948
Albany, N. Y.	35	68	$ 5,511.59	$ 4,679.91
Baltimore, Md.	129	146	43,040.40	39,096.56
Binghampton, N. Y.	*	1	*	22.40
Boston, Mass.	*	52	*	9,856.94
Buffalo, N. Y.	118	68	22,990.22	12,117.55
Charleston, W. Va.	2	*	419.84	*
Cincinnati, O.	30	8	12,679.68	6,389.87
Cleveland, O.	17	25	2,370.25	4,888.59
Columbus, O.	2	5	80.20	469.41
Flint, Mich.	*	1	*	32.58
Harrisburg, Pa.	*	1	*	17.49
Hartford, Conn.	3	7	50.03	427.37
Louisville, Ky.	3	*	134.20	*
New York, N. Y.	6,911	4,205	1,505,472.63	969,211.43
Norfolk, Va.	17	44	3,035.45	5,983.72
Philadelphia, Pa.	391	128	34,433.17	29,792.02
Pittsburgh, Pa.	127	90	9,390.47	13,950.35
Richmond, Va.	24	29	5,132.10	2,916.09
Rochester, N. Y.	5	6	131.07	112.49
Scranton, Pa.	30	33	1,665.12	2,214.55
Springfield, Mass.	8	9	1,574.75	592.61
Syracuse, N. Y.	22	16	4,237.83	940.25
Toledo, O.	*	1	*	109.72
Utica, N. Y.	2	10	454.35	1,101.87
Washington, D. C.	128	133	24,770.29	52,764.80
Totals	8,004	5,086	$1,677,473.73	$1,057,688.58

Source: Freight claim statistics of Railroad Perishable Inspection Agency, New York, N. Y.

* Statistics not reported.

under supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload, or twenty-five per cent. (25%), with a maximum of twenty (20) cases, of the cases of any less carload lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs.

[fol. 44] However, where carload shipments are consigned to cold storage warehouses or packing plants, inspection may be made at such plants but only in presence of authorized representatives of carrier.

If such examination shows no evidence of damage, it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

Rule 2, Section 2.—Applicable at Boston, New York and Philadelphia:

(a) Where consignments of eggs are received at shipping point and receipted for as in apparent good order (contents and condition of contents of packages unknown) and arrive at destination in apparent good order and no cases show external evidence of damage, and where none of the cases have been recoopered in transit, and where no part of the load was shifted in the car, and where a carload has not been transferred from one car to another, no inspection of the contents of any of the cases will be permitted before delivery thereof to the consignee, and the consignee will be required to accept and receipt for same, subject to the same conditions under which the shipment was received for transportation, namely, as in apparent good order (contents and condition of contents of packages unknown).

(b) Where consignments of eggs are received at shipping point and receipted for as in apparent good order (contents and condition of contents of packages unknown), if it has been necessary for the carrier to recooper any of the cases,

during transportation or to transfer a carload from one car to another, or if the load or any part of it has shifted, or if any cases in the shipment show external evidence of damage, the consignee shall be entitled to inspect the contents of all the cases he may deem necessary to determine the condition of the shipment, such inspection to be made jointly with carrier's representative and a receipt shall be given in accordance with the ascertained condition of the shipment.

[fol. 45] Rule 3. Where the carrier determines that space at the carrier's station does not admit of the examination there of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipments at his own warehouse. Upon demand made therefor at the time of delivery, even though space does so admit, the carrier may at its option elect to have the examination at the warehouse of the consignee or such other place as the two may agree. Such inspection shall be a joint inspection and shall be made within twenty-four (24) hours after delivery of the eggs by the carrier. The carrier shall have the right in such instances to mark the cases so delivered or examined for the purpose of identification. No cases shall be opened until both parties are present.

Rule 4. Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint examination of the entire contents of the shipment to determine the damage from such causes, provided demand is made therefor within such time.

Rule 5. On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Rule 6. In connection with shipments of eggs, except Storage Packed Eggs, Storage Packed Dirties and Rehandled and Repacked Eggs, if not more than five per cent. (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five per cent. (5%), claims shall be allowed for all damage in excess of five per cent. (5%) if investigation develops carrier's liability.

Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of

the damage in each case. In other instances, the consignment shall be the unit.

Rule 7. In adjustment of claims for damage, the notation made on paid freight receipt or other document by joint inspectors shall be considered conclusive as to extent of damage. Any investigation necessary for purpose of determining carrier's liability for such damage shall be made promptly and claims shall be settled upon their merits.

No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier. If, by reconditioning any damaged case or contents, there shall result an enhanced value because of such reconditioning of such case or contents such increased value shall be credited to the claim.

[fol. 46] Supplement No. 34 to Official Classification No. 44, effective October 25, 1919.

Eggs, N. O. I. B. N.:

Note 7. Special Regulations Governing Descriptions, Marks, Inspection and Delivery of Eggs, and the Handling of Claims Thereunder.

Section 1. Shippers of eggs shall be required to note on shipping order and bill of lading:

(a) The character of the shipment, whether Current Receipts, Rehandled Current Receipts, Rehandled and Repacked Eggs, see paragraph (d), Storage Packed Eggs, Checks or Dirties, and the number of cases of each.

(b) The particular identification mark appearing on cases containing different grades, as for example:

400 cases storage packed (N/M), no mark.
40 cases dirty eggs, marked "D".
10 cases checked or cracked eggs, marked "C".
If no marks, billing must so read:

(c) Number of cases separately that are not packed with full thirty dozen and extent of shortage.

(d) Rehandled and Repacked eggs consist of eggs rehandled and repacked in new standard cases with new flats, fillers and cushions, in accordance with classification requirements. Cases, fillers and flats shall be considered new and standard when in good condition and moving in direction of market from point first used.

Section 2(a). Applicable at points other than Boston and New York: Upon arrival at destinations of shipments of eggs in carload or less carload lots, consignee or his authorized representative shall have the privilege before eggs leave the possession of carrier and under supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload, or of twenty-five per cent. (25%), with a maximum of twenty (20) cases, of the cases of any less carload lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs.

If such examination shows no evidence of damage, it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

[fol. 47] (b) Applicable at Boston and New York:

(c) Where consignments of eggs are received at shipping point and receipted for as in apparent good order (contents and condition of contents of packages unknown) and arrive at destination in apparent good order and no cases show external evidence of damage, and where none of the cases have been recoopered in transit, and where no part of the load was shifted in the car, and where a carload has not been transferred from one car to another, no inspection of the contents of any of the cases will be per-

mitted before delivery thereof to the consignee, and the consignee will be required to accept and receipt for same, subject to the same conditions under which the shipment was received for transportation, namely, as in apparent good order (contents and condition of contents of packages unknown).

(d) Where consignments of eggs are received at shipping point and receipted for as in apparent good order (contents and condition of contents of packages unknown), if it has been necessary for the carrier to recooper any of the cases during transportation or to transfer a carload from one car to another, or if the load or any part of it has shifted, or if any cases in the shipment show external evidence of damage, the consignee shall be entitled to inspect the contents of all the cases he may deem necessary to determine the condition of the shipment, such inspection to be made jointly with carrier's representative and a receipt shall be given in accordance with the ascertained condition of the shipment.

Section 3. Where the carrier determines that space at the carrier's station does not admit of the examination there, of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. Upon demand made therefore at the time of delivery, even though space does so admit, the carrier may at its option elect to have the examination at the warehouse of the consignee or such other place as the two may agree. Such inspection shall be a joint inspection and shall be made within twenty-four (24) hours after delivery of the eggs by the carrier. The carrier shall have the right in such instances to mark the cases so delivered or examined for the purpose of identification. No cases shall be opened until both parties are present.

However, where carload shipments are consigned to cold storage warehouses or packing plants, inspection may be made at such plants but only in presence of authorized representatives of carrier.

Section 4. Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint examination of the entire contents of

the shipment to determine the damage from such causes, provided demand is made therefor within such time.

[fol. 48] Section 5. On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6. In connection with shipments of eggs, except Storage Packed Eggs, Storage Packed Dirties and Rehandled and Repacked Eggs, if not more than five per cent. (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five per cent. (5%), claims shall be allowed for all damage in excess of five per cent. (5%) if investigation develops carrier's liability.

Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.

Section 7. In adjustment of claims for damage, the notation made on paid freight receipt or other document by joint inspectors shall be considered conclusive as to extent of damage. Any investigation necessary for purpose of determining carrier's liability for such damage shall be made promptly and claims shall be settled upon their merits.

No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier. If, by reconditioning any damaged case or contents, there shall result an enhanced value because of such reconditioning of such case or contents, such increased value shall be credited to the claim.

Official Classification No. 45 (Consolidated Freight Classification No. 1) to Official Classification No. 58 (Consolidated Freight Classification No. 14) same as Supplement No. 34 to Official Classification No. 44.

Supplement No. 3 to Official Classification No. 58 (Consolidated Freight Classification No. 14), effective February 10, 1941.

Eggs, noibn:

Note . 4. Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1—No change.

Section 2. Upon arrival at destinations of shipments of eggs in CL or LCL lots, consignee or his authorized representative shall have the privilege, before eggs leave the possession of carrier and under supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload, or of twenty-five per cent (25%), with a maxi- [fol. 49] mum of twenty (20) cases, of the cases of any LCL lot chosen by him and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs.

If such examination shows no evidence of damage, it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

Section 3.—No change.
Section 4.—No change.
Section 5.—No change.

Section 6.—No change.
Section 7.—No change.

Official Classification No. 59 (Consolidated Freight Classification No. 15) to Official Classification No. 60 (Consolidated Freight Classification No. 16) same as Supplement No. 3 to Official Classification No. 58 (Consolidated Freight Classification No. 14).

Supplement No. 36 to Official Classification No. 60 (Consolidated Freight Classification No. 16), effective December 7, 1945:

Eggs, noibn:

Note 4.—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1:

(a)—No change.
(b)—No change.
(c)—No change.
(d) Rehandled and repacked eggs consist of eggs rehandled and repacked in new standard cases with new flats, fillers and cushions, in accordance with classification requirements, except as provided in Note 9, item 14602.

Section 2—No change.
Section 3—No change.
Section 4—No change.
[fol. 50] Section 5——No change.
Section 6.—No change.
Section 7.—No change.

Note 9.—Wooden cases shall be considered new and standard when they comply with specifications for package 512 and are in good condition and pulpboard flats shall be considered new and standard when in good condition and complying with paragraph (c), Note 7, item 14600-A. Second-hand fibreboard cases and second-hand fillers must not be used. A second-hand fibreboard case is one from which the eggs have been removed for consumption after shipment.

Second-hand fillers are fillers that have been used in wooden cases or fibreboard cases from which the eggs have been removed for consumption after shipment.

Official Classification No. 61 (Consolidated Freight Classification No. 17) same as Supplement No. 36 to Official Classification No. 60 (Consolidated Freight Classification No. 16).

Supplement No. 2 to Official Classification No. 62 (Consolidated Freight Classification No. 18) effective July 24, 1948:

Eggs, noibn:

Note 5.—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1—Shippers of eggs shall be required to note on shipping order and bill of lading:

(1) The character of the shipment, whether current receipts or graded, rehandled and repacked eggs, storage packaged eggs, *see paragraphs* (*a*), (*b*) and (*c*), checks or dirties, and the number of cases each.

(2) The particular identification mark appearing on cases containing different grade, as for example:

400 cases storage packed (N/M), no mark
40 cases dirty eggs, marked "D"
10 cases checked or cracked eggs, marked "C"
If no marks, billing must so read.

(3) Number of cases separately that are not packed with full thirty dozen and extent of shortage.

[fol. 51] (a) The term "rehandled and repacked" shall apply only to eggs that have been rehandled and repacked *at point of origin of rail shipment* in new standard cases with new flats, fillers and cushions, in accordance with Classification requirements, except as provided in Note 10, item 14602. *Broken, cracked, checked eggs and eggs stained from broken eggs shall be removed in such rehandling and repacking. Eggs that have been shipped by rail as "rehandled and repacked" eggs under the provisions of this paragraph and de-*

livered by rail to a storage warehouse will, if reshipped by rail from the storage warehouse, be considered as "rehandled and repacked" eggs.

(b) The term "storage packed eggs" shall apply only to eggs that have been graded and sorted at packing plants or storage warehouses located at point of origin of the rail shipment after the removal of broken, cracked, checked eggs, and eggs stained from broken eggs. The graded and sorted eggs shall be packed in new standard cases with new flats, fillers and cushions, in accordance with Classification requirements, except as provided in Note 10 item 14602. *Eggs that have been shipped by rail as "storage packed eggs" under the provisions of this paragraph and delivered by rail to a storage warehouse will, if reshipped by rail from the storage warehouse, be considered as "storage packed eggs."*

(c) *The terms "current receipts" or "graded" shall apply to eggs not complying with the provisions of paragraphs (a) and (b). (The terms "current receipts" or "graded" when used on a shipping order and bill of lading do not necessarily denote the commercial grade of the eggs.)*

Section 2.—(a) Upon arrival at destinations of shipments of *"rehandled and repacked" eggs or "storage packed"* eggs in CL or LCL lots, consignee or his authorized representative shall have the privilege, before eggs leave the possession of carrier and under the supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload or of twenty-five per cent (25%) with a maximum of twenty (20) cases, of the cases of any LCL lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs. *A case showing external evidence of damaged eggs within that case not disclosed by top layer inspection may be segregated for the purpose of ascertaining the actual damage in that case.*

[fol. 52] If such examination shows no evidence of damage it shall be considered complete and final for

the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

(b) Upon arrival at destinations of shipments of "current receipts" or "*graded*" eggs in CL or LCL lots consignee or his authorized representative shall have the privilege before eggs leave the possession of carrier and under supervision of carrier's representative of lifting the lids of twenty (20) cases in any carload, or of twenty-five per cent (25%) with a maximum of twenty (20) cases, of the cases of any LCL lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining whether such cases contain damaged eggs. *A case showing external evidence of damaged eggs within that case not disclosed by top layer inspection may be segregated for the purpose of ascertaining the actual damage in that case.*

If such examination shows *five per cent (5%) or less* damage, it shall be considered complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses *more than five per cent (5%) damage*, consignee shall have the right to make further examination of shipment and to set aside all cases containing *more than five per cent (5%) damage*. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee, or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

Section 3.—Where the carrier determines that space at the carrier's station does not admit of the examina-

tion there of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. Upon demand made thereof at the time of delivery, even though space does so admit, the carrier may at its option elect to have the examination at the warehouse of the consignee or such other place as the two may agree.

[fol. 53] Such inspection shall be a joint inspection and shall be made within twenty-four (24) hours after delivery of the eggs by the carrier. The carrier shall have the right in such instances to mark the cases so delivered or examined for the purpose of identification. No cases shall be opened until both parties are present. However, where carload shipments are consigned to cold storage warehouses or packing plants, inspection may be made at such plants but only in presence of authorized representatives of carrier.

Section 4. Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint examination of the entire contents of the shipment to determine the damage from such causes, provided demand is made therefor within such time.

Section 5. On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6. In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five per cent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five per cent (5%), claims shall be allowed for all damage in excess of five per cent (5%) if investigation develops carrier's liability.

Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.

Section 7. In adjustment of claims for damage, the notation made on paid freight receipt or other document by

joint inspectors shall be considered conclusive as to extent of damage. Any investigation necessary for purpose of determining carrier's liability for such damage shall be made promptly and claims shall be settled upon their merits.

No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier. If, by reconditioning any damaged case or contents, there shall result an enhanced value because of such reconditioning of such case or contents, such increased value shall be credited to the claim.

[fol. 54] Current tariff reference:

Supplement No. 7 to Consolidated Freight Classification No. 18 which is the same as Supplement No. 2 to Consolidated Freight Classification No. 18.

* * * * * * *

[fol. 55]

I.C.C. Docket No. 30030

EXHIBIT No. 11

Witness: E. A. Hodkinson

Statement Showing Freight Revenue and Claim Payments
Eggs—Carload—Delivered Year 1947

Line		New York	Philadelphia	Baltimore	Boston [1]	Totals
1	Total Cars	7638	667	690	661	9656
2	Total Claim Cars	5044	325	114	176	5659
3	Percent 2 of 1	66.0	48.7	16.5	26.6	58.6
4	Total Freight Charges (All cars line 1)	$2,638,904.94	$280,590.11	$261,322.16	$276,142.86	$3,456,960.07
5	Total Claim Payments [2]	1,332,907.87	32,741.06	41,386.65	33,590.14 [1]	1,440,625.72
6	Percent 5 of 4	50.5	11.7	15.8	12.2	41.7
7	Claim Payments					
	5 ÷ 2 Per Claim Car	$264.26	$100.74	$363.04	$190.85	$254.57
	5 ÷ 1 Per Car Shipped	$174.51	$ 49.09	$ 59.98	$ 50.82	$149.19

[1] Only 10 months Claim Payments.
[2] Claim Payments shown are for the identical cars in lines 1 and 2.

[fol. 56]

I.C.C. Docket 30030

EXHIBIT No. 12

Witness: E. A. Hodkinson

Page 1 of 5

Recapitulation
Eggs—Category–A–Year 1947

	New York (12 Months)	Philadelphia (12 Months)	Baltimore (12 Months)	Boston (10 Months)	Total
Total Cars	5,044	325	114	176	5,659
Total Claim Payments (Item 9)	$1,332,907.87	$32,741.06	$41,386.65	$33,590.14	$1,440,625.72
Total Cases Billed (Item 10)	2,635,326	141,631	65,964	94,248	2,937,169
Total Freight Charges (Item 11)	$1,767,668.55	$102,785.16	$45,289.96	$68,985.19	$1,984,728.86
Total Cases Damaged (Item 12)					
Fibre	446,869	9,794 1/2	2,130	3,348	462,141 1/2
Wood	428,846	5,212	9,666	5,828	449,552
Total Eggs Damaged Doz.					
A—Broken	1,172,376 1/4	26,156	41,264	24,353 9/12	1,264,150
B—Leakers	260,154 1/2	12,869	120	13,019 2/12	286,162 8/12
C—Cracks	757,204 1/4	16,037 1/2	64,942	29,682 1/12	867,862 10/12
D—Stained	989,272	14,638 1/2	2,045	4,166 6/12	1,010,122
Totals	3,179,004	69,701	108,371	71,221 6/12	3,428,297 6/12

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[fol. 57]

Eggs—Category–A–Year 1947

New York

	Jan.	Feb.	March	April	May	June	July		June	July	August	Sept.	Oct.	Nov.	Dec.	Total
Total Cars	455	393	396	563	631	603	547		603	547	437	310	277	189	243	5,044
Total Claim Payments (Item 9)	$ 86,426.37	$ 73,086.48	$ 64,489.36	$130,854.76	$172,538.90	$172,754.34	$178,630.23	)0	$172,754.34	$178,630.23	$161,611.09	$110,819.21	$88,236.23	$45,116.96	$48,343.94	$1,332,907.87
Total Cases Billed (Item 10)	245,043	209,234	213,130	303,103 1/2	340,659 1/2	318,396 1/2	281,390 1/-	9 1/2	318,396 1/2	281,390 1/4	220,903	150,574	134,051	94,087	124,754	2,635,326
Total Freight Charges (Item 11)	$151,896.01	$139,110.84	$144,439.32	$202,970.27	$229,867.60	$212,894.69	$188,874.45	)0	$212,894.69	$188,874.45	$151,040.57	$102,217.30	$90,847.17	$65,339.06	$88,171.27	$1,767,668.55
Total Cases Damaged (Item 12)																
Fibre	37,619	33,938	29,837	47,979	59,312	53,720	54,748	2	53,720	54,748	43,210	30,432	21,491	16,108	18,475	446,869
Wood	25,434	25,327	20,914	50,114	67,482	68,365	53,419	2	68,365	53,419	44,920	26,237	24,655	10,230	11,749	428,846
Total Eggs Damaged Doz.																
A—Broken	93,516	83,029	68,884 1/2	119,420	148,586	148,948	153,267 1/2	6	148,948	153,267 1/2	120,435 1/2	85,144 1/2	64,232	40,018	46,895 1/2	1,172,376 1/4
B—Leakers	7,019	8,720	9,818	31,104	43,295	46,450	40,590	5	46,450	40,590	46,370	16,251	13,235 1/2	5,160	2,142	260,154 1/2
C—Cracks	48,595	46,877	39,329	82,837 1/2	113,746	108,006	98,103 1/4	6	108,006	98,103 1/4	80,333	53,810	40,119 1/2	21,959	23,486	757,201 1/4
D—Stained	78,469	69,955	54,815	101,150	133,319	132,703	124,756 1/2	9	132,703	124,756 1/2	98,318 1/2	69,979	54,252	34,037	37,518	989,272
TOTALS	227,599	208,581	172,846 1/2	334,511 1/2	438,946	436,107	416,717	6	436,107	416,717	335,457	225,184 1/2	171,839	101,174	110,041 1/2	3,179,004

[fol. 58]

Eggs—Category-A-Year 1947

Philadelphia

	Jan.	Feb.	March	April	May	June	July	Aug
Total Cars	18	25	24	30	26	35	38	
Total Claim Payments (Item 9)	$ 810.08	$ 784.67	$1,778.36	$2,001.56	$2,404.64	$ 2,698.72	$ 7,337.47	$ 7,694
Total Cases Billed (Item 10)	7,303	11,374	9,905	11,779	11,961	15,817	19,077	24,7
Total Freight Charges (Item 11)	$4,917.69	$8,128.08	$7,049.83	$8,511.73	$8,861.14	$11,502.73	$14,442.25	$17,763.
Total Cases Damaged (Item 12)								
Fibre	406	365	837	888	938	636	2,024	1,7
Wood	115	173	85	166	358	1,279	896	1,3
Total Eggs Damaged Doz.								
A—Broken	718	910 1/2	2,093	2,052	2,181	2,299 1/2	4,786	5,7
B—Leakers	618	402	899 1/2	904 1/2	869	1,298	2,269	2,5
C—Cracks	690	538	1,095	1,175 1/2	1,321	2,141	3,302	2,7
D—Stained	506 1/2	459 1/2	998	1,104	1,010	1,872	2,780	2,8
TOTALS	2,532 1/2	2,310	5,085 1/2	5,236	5,381	7,610 1/2	13,137	13,9

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Eggs—Category-A-Year 1947

Philadelphia

	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	Total
	30	26	35	38	51	23	29	12	14	325
	$2,001.56	$2,404.64	$ 2,698.72	$ 7,337.47	$ 7,694.64	$2,969.10	$2,255.40	$1,512.92	$ 493.50	$ 32,741.06
	11,779	11,961	15,817	19,077	24,785	8,430	10,587	4,678	5,935	141,631
	$8,511.73	$8,861.14	$11,502.73	$14,442.25	$17,763.41	$5,925.32	$7,897.73	$3,348.43	$4,616.82	$102,785.16
	888	938	636	2,024	1,725 1/2	675	750	350	245	9,794 1/2
	166	358	1,279	896	1,323	274	231	288	24	5,212
	2,052	2,181	2,299 1/2	4,786	5,796	2,296	1,569	1,055	400	26,156
1/2	904 1/2	869	1,298	2,269	2,549	1,011	1,187	653	209	12,869
	1,175 1/2	1,321	2,141	3,302	2,744	1,301	907	599	224	16,037 1/2
	1,104	1,010	1,872	2,780	2,868 1/2	1,219	941	618	262	14,638 1/2
1/2	5,236	5,381	7,610 1/2	13,137	13,957 1/2	5,827	4,604	2,925	1,095	69,701

[fol. 58a]

Eggs—Category A—Year 1947

Baltimore

	Jan.	Feb.	March	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	Total
Total Cars	6	2	7	11	10	9	17	14	13	9	5	11	114
Total Claim Payments (Item 9)	$2,637.13	$324.30	$1,176.98	$2,214.35	$2,435.46	$1,943.85	$8,320.40	$5,671.49	$5,443.69	$4,338.32	$2,707.78	$4,172.90	$41,386.65
Total Cases Billed (Item 10)	3,432	1,280	4,240	6,115	6,640	5,280	9,965	7,656	6,975	5,272	2,920	6,189	65,964
Total Freight Charges (Item 11)	$1,830.98	$885.31	$2,988.56	$4,245.06	$4,605.04	$3,512.66	$6,981.09	$5,413.99	$4,643.39	$3,568.58	$2,022.58	$4,592.72	$45,289.96
Total Cases Damaged (Item 12)													
Fibre	492	174	227	195	17	95	191	168	127	265	.....	179	2,130
Wood	233	.....	131	589	1,188	529	2,486	1,305	981	871	490	863	9,666
Total Eggs Damaged Doz.													
A—Broken	3,325	448	1,563	2,505	3,008	1,831	8,566	4,884	4,898	3,929	2,501	3,806	41,264
B—Leakers	.....	.....	.....	.....	.....	.....	.....	120	.....	.....	.....	.....	120
C—Cracks	4,359	728	2,045	3,396	4,474	4,124	13,652	9,059	7,963	5,894	3,349	5,899	64,942
D—Stained	.....	.....	142	586	159	30	733	367	.....	.....	28	.....	2,045
TOTALS	7,684	1,176	3,750	6,487	7,641	5,985	22,951	14,430	12,861	9,823	5,878	9,705	108,371

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Eggs—Category–A–Year 1947 (10 Months)

Boston

	Jan.	Feb.	March	April	May	June	July
Total Cars	5	1	18	26	25	31	43
Total Claim Payments (Item 9)	$ 242.53	$112.96	$ 980.21	$ 2,103.09	$ 4,853.36	$ 7,055.13	$ 9,182.80
Total Cases Billed (Item 10)	2,447	27	10,175	14,109	13,797	16,905	24,069
Total Freight Charges (Item 11)	$1,871.68	$ 21.98	$7,309.94	$10,116.83	$10,194.73	$12,179.38	$18,114.56
Total Cases Damaged (Item 12)							
Fibre	90	.....	694	783	412	507	410
Wood	56	27	126	397	1,480	1,153	1,924
Total Eggs Damaged Doz.							
A—Broken	227 11/12	.....	742 6/12	1,661 6/12	3,725 6/12	6,233	8,503 6/
B—Leakers	171 9/12	.....	981	1,192 8/12	3,136 9/12	2,845	3,198
C—Cracks	249 5/12	392	2,088 6/12	2,766 5/12	6,123 6/12	5,230	8,629 3/
D—Stained	.....	584	.....	548	354	541	1,876 6/
Totals	649 1/12	976	3,812	6,168 7/12	13,339 7/12	14,849	22,207 3/

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Eggs—Category–A–Year 1947 (10 Months)

Boston

	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	Total
Total Cars	26	25	31	43	17	7	3	.....	.....	176
Total Claim Payments (Item 9)	3.09	$ 4,853.36	$ 7,055.13	$ 9,182.80	$8,187.88	$ 727.58	$154.60	.....	.....	$33,590.14
Total Cases Billed (Item 10)	,109	13,797	16,905	24,069	8,616	3,370	733	.....	.....	94,248
Total Freight Charges (Item 11)	6.83	$10,194.73	$12,179.38	$18,114.56	$6,287.76	$2,320.81	$567.52	.....	.....	$68,985.19
Total Cases Damaged (Item 12)										
Fibre	783	412	507	410	372	24	56	.....	.....	3,348
Wood	397	1,480	1,153	1,924	457	208	.....	.....	.....	5,828
Total Eggs Damaged Doz.										
A—Broken	,661 6/12	3,725 6/12	6,233	8,503 6/12	2,641	509	110	.....	.....	24,353 9/12
B—Leakers	,192 8/12	3,136 9/12	2,845	3,198	1,042	367	85	.....	.....	13,019 2/12
C—Cracks	,766 5/12	6,123 6/12	5,230	8,629 3/12	3,494	583 6/12	125 6/12	.....	.....	29,682 1/12
D—Stained	548	354	541	1,876 6/12	161	50 6/12	51 6/12	.....	.....	4,166 6/12
Totals	,168 7/12	13,339 7/12	14,849	22,207 3/12	7,338	1,510	372	.....	.....	71,221 6/12

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I. C. C. Docket: 30030

Exhibit No. 13

Witness: E. A. Hodkinson

Comparison Claim Payments and Freight Revenue on Eggs in

Year	1940		1941		1942		1943	
Road	Claim Payments	Freight Revenue	Claim Payments	Freight Revenue	Claim Payments	Freight Revenue	Claim Payments	Fre Rev
	$	$	$	$	$	$	$	$
New England Region								
Bangor & Aroostock R. R.	—	1,043.00	—	979.00	—	105.00	—	
Boston & Albany R. R.	—	14,362.00	—	16,074.00	—	10,714.00	—	17
Boston & Maine R. R.	—	54,123.00	—	56,204.00	—	32,269.00	—	41
Central Vermont Ry.	10.49	3,711.00	13.51	6,719.00	28.70	15,697.00	425.76	7
Maine Central R. R.	—	3,012.00	12.75	2,455.00	14.04	880.00	80.55	1
New York Connecting	—	722.00	—	574.00	—	525.00	—	
New York, New Haven & Hartford R. R.	912.18	67,409.00	989.65	59,886.00	586.67	53,599.00	Cr. 548.33	67
Rutland R. R.	—	570.00	—	621.00	—	261.00	—	1
Great Lakes Region								
Ann Arbor R. R.	—	6,073.00	—	12,588.00	—	7,372.00	—	16
Delaware & Hudson R. R.	112.22	17,381.00	240.37	18,745.00	289.27	11,843.00	356.05	10
Delaware, Lackawanna & Western	2,734.19	186,453.00	2,449.62	175,876.00	5,767.16	125,413.00	14,140.69	163
Detroit & Mackinac Ry.	—	702.00	—	212.00	—	—	—	
Detroit & Toledo Shore Line R. R.	—	387.00	2.00	463.00	14.00	182.00	1.00	
Erie R. R.	6,562.00	233,980.00	6,256.00	304,574.00	7,533.00	287,830.00	33,515.00	339
Grand Truck Western R. R.	5,290.00	117,911.00	5,277.00	128,699.00	6,956.00	100,884.00	16,408.00	113
Lehigh & Hudson River Ry.	—	1,047.00	—	835.00	—	1,478.00	—	1
Lehigh & New England R. R.	1.12	143.00	—	25.00	12.05	—	—	
Lehigh Valley R. R.	5,842.59	137,235.00	6,843.84	141,466.00	10,343.37	99,799.00	22,040.25	111
Monongahela Ry.	—	83.00	—	14.00	2.25	—	—	
New York Central R. R.	20,567.00	608,559.00	15,593.00	647,133.00	25,234.00	588,597.00	53,973.00	615
New York Chicago & St. Louis R. R.	2,696.08	188,260.00	4,224.47	177,272.00	5,086.82	137,078.00	10,150.22	158
New York Ontario & Western R. R.	—	11,521.00	—	11,876.00	—	35,327.00	—	13
New York Susquehanna & Western R. R.	—	43.00	—	54.00	—	31.00	—	
Pere Marquette Dist. C. & O. Ry.	984.00	44,881.00	1,064.00	45,765.00	1,178.00	39,171.00	4,248.00	43
Pittsburgh and Lake Erie R. R.	56.57	1,045.00	111.29	1,265.00	2.53	1,369.00	15.16	1
Pittsburgh & West Virginia Ry.	4.00	2,005.00	29.00	2,823.00	29.00	3,227.00	29.00	6
Pittsburgh Shawmut & Northern R. R.	—	—	—	—	—	—	—	
Wabash R. R.	7,684.55	237,243.00	4,341.25	226,255.00	6,397.49	178,096.00	12,277.19	214

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I. C. C. Docket: 30030

Exhibit No. 13

Witness: E. A. Hodkinson

on Claim Payments and Freight Revenue on Eggs in Shell—Carloads

	1942		1943		1944		1945		1946		1947	
	Claim Payments	Freight Revenue	Claim Payments	Freight Revenue	Claim Payments	Freight Revenue	Claim Payments	Freight Revenue	Claim Payments	Freight Revenue	Claim Payments	Freight Revenue
	$	$	$	$	$	$	$	$	$	$	$	$
	—	105.00	—	—	—	—	—	—	—	84.00	—	—
	—	10,714.00	—	17,601.00	—	14,912.00	—	22,162.00	—	16,032.00	—	10,617.00
	—	32,269.00	—	41,803.00	1,094.00	32,295.00	4,254.00	53,024.00	4,881.00	47,483.00	5,280.00	42,007.00
	28.70	15,697.00	425.76	7,732.00	294.49	11,838.00	1,236.28	14,159.00	1,361.50	10,184.00	1,563.80	7,518.00
	14.04	880.00	80.55	1,283.00	21.65	1,072.00	Cr. 22.59	1,708.00	54.60	2,665.00	175.15	1,695.00
	—	525.00	—	326.00	—	924.00	—	451.00	—	—	—	111.00
	586.67	53,599.00	Cr. 548.33	67,406.00	Cr. 1,913.82	76,822.00	4,886.20	102,658.00	7,974.21	39,805.00	2,983.97	30,069.00
	—	261.00	—	1,032.00	—	18,824.00	—	4,987.00	—	415.00	—	140.00
	—	7,372.00	—	16,919.00	—	13,295.00	596.00	15,465.00	1,385.00	17,063.00	2,176.00	10,474.00
	289.27	11,843.00	356.05	10,732.00	2,967.15	14,989.00	4,177.64	11,240.00	1,676.46	10,865.00	1,391.70	7,039.00
	5,767.16	125,413.00	14,140.69	163,944.00	27,449.85	100,447.00	29,046.86	204,946.00	30,394.90	178,063.00	48,692.01	222,679.00
	—	—	—	—	—	—	—	—	—	—	—	—
	14.00	182.00	1.00	249.00	18.00	994.00	—	250.00	—	1,529.00	—	493.00
	7,533.00	287,830.00	33,515.00	339,905.00	50,724.00	384,900.00	172,961.00	693,104.00	374,334.10	745,301.00	420,926.00	721,193.00
	6,956.00	100,884.00	16,408.00	113,565.00	25,598.00	93,137.00	39,809.00	125,758.00	76,942.00	144,696.00	49,754.00	112,432.00
	—	1,478.00	—	1,229.00	—	1,582.00	—	4,056.00	151.00	1,656.00	436.00	864.00
	12.05	—	—	34.00	—	—	—	—	—	32.00	47.15	15.00
	10,343.37	99,799.00	22,040.25	111,205.00	29,556.36	77,317.00	60,484.26	136,173.00	17,066.16	58,339.00	20,479.39	70,832.00
	2.25	—	—	—	—	—	—	—	—	—	—	—
	25,234.00	588,597.00	53,973.00	615,778.00	91,666.00	731,999.00	141,961.00	1,020,438.00	274,435.00	1,032,526.00	331,598.00	723,950.00
	5,086.82	137,078.00	10,150.22	158,629.00	18,634.54	150,465.00	40,505.31	208,477.00	69,942.50	209,545.00	60,076.58	242,606.00
	—	35,327.00	—	13,835.00	—	5,019.00	—	10,232.00	—	6,409.00	—	4,538.00
	—	31.00	—	92.00	—	—	—	130.00	—	121.00	—	—
	1,178.00	39,171.00	4,248.00	43,309.00	7,519.00	136,127.00	6,695.31	100,920.00	10,534.50	66,819.00	9,730.01	19,970.00
	2.53	1,369.00	15.16	1,611.00	22.35	3,203.00	153.24	1,297.00	49.88	3,979.00	704.88	5,928.00
	29.00	3,227.00	29.00	6,117.00	57.00	1,683.00	129.00	3,639.00	464.00	3,763.00	215.00	2,027.00
	—	—	—	—	—	—	—	21.00	—	—	—	—
	6,397.49	178,096.00	12,277.19	214,851.00	22,179.97	187,152.00	31,861.85	197,738.00	65,405.13	188,229.00	41,926.72	151,241.00

EXHIBIT NO 16
Witness C. R. Nelson

BEFORE THE
INTERSTATE COMMERCE COMMISSION

Special Regulations - Eggs) I.C.C. Docket No. 30030

STATEMENT SHOWING AMOUNT OF DAMAGE ON CARS OF EGGS SHIPPED TO NEW YORK, N.Y. (EXCEPT AS NOTED) BY NORTHWEST DAIRY FORWARDING COMPANY, TOGETHER WITH BREAKDOWN SHOWING THE CONTENTS OF SUCH CARS BY LOTS, WHETHER REHANDLED AND REPACKED AT RAIL ORIGIN OR TRUCKED THERETO, AND DISTANCE OF MOVEMENT TO RAIL ORIGIN BY LOTS, FOR JANUARY, 1942 AND FOR JANUARY, JULY AND OCTOBER, 1947.

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January 1942 — 2	through 5
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July 1947 — 11	" 15
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Summary	- 1 -

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Road	Year 1940 Claim Payments	1940 Freight Revenue	1941 Claim Payments	1941 Freight Revenue	1942 Claim Payments	1942 Freight Revenue	1943 Claim Payments	1943 Freight Revenue	Cla Payn
	$	$	$	$	$	$	$	$	
Central Eastern Region									
Akron, Canton & Youngstown R. R.	—	308.00	—	21.00	—	7,490.00	—	4,391.00	
Baltimore & Ohio R. R.	4,645.00	326,115.00	8,252.00	348,184.00	9,647.00	328,826.00	22,926.00	380,375.00	34,
Bessemer & Lake Erie R. R.	—	—	—	—	—	—	—	—	
Central R. R. Co. of New Jersey	150.31	12,925.00	67.79	18,653.00	134.50	11,845.00	1,490.73	14,869.00	2,
Central R. R. Co. of Pennsylvania	—	—	—	—	—	—	—	—	
Chicago & Eastern Illinois R. R.	1.20	10,459.00	200.40	12,554.00	88.33	15,154.00	321.16	23,665.00	
Chicago & Illinois Midland Ry.	—	68.00	9.00	48.00	—	62.00	16.00	216.00	
Chicago, Indianapolis & Louisiana Ry.	72.00	8,133.00	38.00	9,608.00	510.00	4,178.00	112.00	11,840.00	
Detroit, Toledo & Ironton R. R.	—	358.00	—	667.00	1.28	2,270.00	—	601.00	
Elgin, Joliet & Eastern Ry.	—	26.00	—	340.00	—	347.00	—	685.00	
Illinois Terminal R. R.	—	132.00	—	152.00	8.10	7.00	106.47	663.00	
Long Island R. R.	92.00	28,876.00	158.00	29,902.00	348.00	24,773.00	347.00	21,693.00	
Missouri-Illinois R. R.	—	414.00	—	340.00	—	136.00	—	36.00	
Pennsylvania R. R.	15,538.00	463,732.00	14,428.00	456,407.00	18,647.00	384,005.00	31,311.00	457,656.00	37,
Pennsylvania-Reading Sea Shore Lines	—	1,169.00	2.20	892.00	18.81	683.00	7.22	1,034.00	
Reading Co.	426.27	47,112.00	449.00	45,114.00	555.00	36,114.00	1,357.00	41,857.00	3,
Staten Island Rapid Transit Ry.	—	—	—	—	—	—	—	102.00	
Western Maryland Ry.	155.84	8,557.00	52.18	10,114.00	85.91	9,220.00	130.02	11,169.00	
Wheeling & Lake Erie Ry.	9.00	3,457.00	52.00	6,249.00	32.00	2,633.00	26.00	3,875.00	
Pocahontas Region									
Chesapeake & Ohio Ry.	245.43	85,725.00	474.66	63,036.00	503.83	95,368.00	Cr. 3,313.60	159,585.00	1,
Norfolk & Western Ry.	114.60	30,250.00	158.89	43,217.00	2,616.88	52,915.00	1,764.52	69,429.00	1,
Richmond Fredericksburg & Potomac R. R.	29.70	1,476.00	95.92	3,953.00	16.55	4,061.00	44.71	4,262.00	
Virginia Ry.	—	4,255.00	17.00	6,799.00	11.00	23,568.00	262.00	35,171.00	
Total	74,936.34	2,973,451.00	71,902.79	3,095,702.00	102,698.99	2,735,402.00	224,019.77	3,192,361.00	358,
Claim Payments Percentage	2.52		2.32		3.75		7.02		

SOURCES—

Freight Revenue—I. C. C. Freight Commodity Statistics.
Claim Payments—Individual Railroad Reports.

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1941 Freight Revenue	1942 Claim Payments	1942 Freight Revenue	1943 Claim Payments	1943 Freight Revenue	1944 Claim Payments	1944 Freight Revenue	1945 Claim Payments	1945 Freight Revenue	1946 Claim Payments	1946 Freight Revenue	1947 Claim Payments	1947 Freight Revenue
$	$	$	$	$	$	$	$	$	$	$	$	$
21.00	—	7,490.00	—	4,391.00	—	15,117.00	—	1,451.00	—	130.00	26.91	69.00
348,184.00	9,647.00	328,826.00	22,926.00	380,375.00	34,484.00	466,603.00	90,214.00	570,553.00	165,657.00	577,922.00	232,113.00	522,328.00
—	—	—	—	—	—	46.00	—	—	—	—	—	—
18,653.00	134.50	11,845.00	1,490.73	14,869.00	2,279.75	17,600.00	2,537.72	21,001.00	223.27	17,776.00	6,321.38	16,562.00
—	—	—	—	—	—	—	—	—	—	2,146.00	186.43	2,126.00
12,554.00	88.33	15,154.00	321.16	23,665.00	691.82	44,622.00	1,107.49	34,928.00	1,065.53	28,210.00	3,227.07	28,191.00
48.00	—	62.00	16.00	216.00	126.00	1,432.00	317.00	1,138.00	836.00	1,176.00	45.00	378.00
9,608.00	510.00	4,178.00	112.00	11,840.00	246.00	17,643.00	60.00	9,034.00	91.00	8,966.00	985.00	6,827.00
667.00	1.28	2,270.00	—	601.00	—	1,373.00	—	276.00	6.71	508.00	2.70	51.00
340.00	—	347.00	—	685.00	—	1,597.00	—	312.00	10.00	562.00	1.00	94.00
152.00	8.10	7.00	106.47	663.00	5.62	765.00	85.34	1,507.00	163.84	209.00	99.92	23.00
29,902.00	348.00	24,773.00	347.00	21,693.00	215.00	16,487.00	320.00	17,882.00	1,527.00	38,275.00	1,074.00	35,500.00
340.00	—	136.00	—	36.00	—	—	—	346.00	—	88.00	—	—
456,407.00	18,647.00	384,005.00	31,311.00	457,656.00	37,546.00	473,841.00	123,222.00	661,375.00	171,659.00	573,415.00	157,034.00	486,504.00
892.00	18.81	683.00	7.22	1,034.00	23	1,057.00	53.19	1,209.00	118.38	1,328.00	73.25	1,626.00
45,114.00	555.00	36,114.00	1,357.00	41,857.00	3,073.00	36,229.00	7,896.00	62,021.00	13,159.00	50,889.00	14,372.00	41,935.00
—	—	—	—	102.00	—	1,105.00	—	9,507.00	—	789.00	1,875.71	185.00
10,114.00	85.91	9,220.00	130.02	11,169.00	274.22	7,389.00	721.42	16,441.00	1,892.57	13,505.00	902.76	9,803.00
6,249.00	32.00	2,633.00	26.00	3,875.00	112.00	1,811.00	161.00	4,190.00	785.00	5,231.00	760.00	2,603.00
63,036.00	503.83	95,368.00	Cr. 3,313.60	159,585.00	1,465.73	170,732.00	5,216.22	293,370.00	7,773.78	139,174.00	16,877.46	157,177.00
43,217.00	2,616.88	52,915.00	1,764.52	69,429.00	1,769.33	104,379.00	4,685.41	118,606.00	5,657.66	65,228.00	9,230.55	48,193.00
3,953.00	16.55	4,061.00	44.71	4,262.00	137.86	6,808.00	242.57	4,893.00	1,073.60	6,647.00	535.18	3,248.00
6,799.00	11.00	23,568.00	262.00	35,171.00	523.00	29,968.00	51.00	32,313.00	148.00	8,480.00	574.00	8,765.00
3,095,702.00	102,698.99	2,735,402.00	224,019.77	3,192,361.00	358,838.10	3,475,690.00	75,669.90	4,799,386.00	1,309,300.18	4,326,577.00	1,444,453.68	3,760,316.00
2	3.75		7.02		10.32		16.16		30.26		38.41	

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I.C.C. Docket No. 30030

EXHIBIT No. 14

Witness: E. A. Hodkinson

Average Monthly Prices, Shell Eggs, At New York, N. Y.,
From January 1939 to December 1948

(Prices shown are in cents per dozen)

	1939	1940	1941	1942	1943
January	20.7	22.96	22.32	36.37	43.61
February	18.67	25.08	20.10 L	31.83	39.29 L
March	18.43	18.77	22.19	30.85 L	41.40
April	18.43	18.86	25.53	32.98	40.43
May	18.00	18.73	27.20	33.75	41.24
June	17.51 L	17.64 L	29.87	35.40	44.02
July	18.16	18.69	32.09	36.86	47.50
August	18.21	20.16	35.81	42.54	50.91
September	21.80	23.50	38.32	45.10	54.84
October	25.95	26.55	41.23	48.45	58.22 H
November	29.20 H	30.10 H	43.12 H	48.50 H	55.56
December	22.94	28.81	38.18	48.50	50.73

Prevailing Grades

1939—Mixed "Standards" Jan to Dec.
1940—Mixed "Extras" Jan. to Dec.
1941—Mixed "H'Wts." Jan. to Dec.
1942—Mixed Color—H'Wts. Jan. to Dec.
1943—Mixed Color—H'Wts. Jan. to July 10th.
1943—Mixed Color—Specials July 11th to Dec.

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Average Monthly Prices, Shell Eggs, at New York, N. Y.,
From January 1939 to December 1948

(Prices shown are in cents per dozen)

	1944	1945	1946	1947	1948
January	40.64	50.61	44.40	45.32	51.00
February	37.15	44.63	38.39 L	45.18 L	49.66
March	35.89	42.28	40.00	48.10	49.22 L
April	35.44	43.30	40.34	49.98	50.36
May	35.02 L	43.30	42.61	49.05	50.35
June	38.54	45.59	42.17	50.86	52.07
July	46.61	49.68	46.50	54.73	54.79
August	47.50	54.97	49.02	57.90	59.52
September	50.45	55.68	56.18	65.38	63.43
October	53.19	58.98	59.04 H	65.55 H	70.95 H
November	54.80 H	60.30 H	55.28	61.29	68.90
December	53.73	59.25	51.24	62.84	58.72

Prevailing Grades

1944—Mixed Color—Specials—Jan. to Dec.
1945—Mixed Color—Consumer A Ex. Lge.—Jan. to Dec.
1946—Mixed Color—Cons. Grade A, Ex. Lge. Jan. to Aug.
1946—Mixed Color—Fcy. H'Wts.—Sept. to Dec.
1947—Mixed Color—Fcy. H'Wts.—Jan. to Dec.
1948—Mixed Color—Fcy. H'Wts.—Jan. to Dec.

Authority

Transcribed from daily and monthly statistical records of the Urner-Barry Co., Publishers of the "Producers Price-Current."

SUMMARY

	1942	1947		
	January	January	July	October
Eggs Shipped (Cases)	8,327	10,361	7,839	10,938
Eggs, Rehandled and Repacked at Rail Origin (Cases)	2,861	1,087	2,020	3,330
Eggs, Rehandled and Repacked, trucked to Rail Origin (Cases)	5,466	9,274	5,819	7,608
Claims on All Eggs:				
Total	$184.69	$1,987.74	$5,387.96	$8,378.48
Average per Case	.022	.191	.687	.766
Claims on Eggs Rehandled and Repacked at Rail Origin				
Cases Shipped	2,861	1,087	729	2,847
Total	$116.21	$162.84	$529.83	$2,308.04
Average per Case Shipped	.046	.150	.726	.811
Claims on Eggs Rehandled and Repacked and trucked to Rail Origin				
Cases Shipped	5,466	9,274	3,283	4,754
Total	$68.48	$1,824.90	$2,293.62	$3,634.61
Average Per Case Shipped	.013	.197	.699	.764
Claims Filed Covering Two or More Lots of Eggs on which it is impossible to divide as between those rehandled and repacked at rail origin and those rehandled and repacked elsewhere.				
Cases Shipped	--	--	3,827	3,337
Total	--	--	$2,564.71	$2,435.83
Average per case shipped	--	--	.670	.729

STATEMENT SHOWING AMOUNT OF DAMAGE ON CARS OF EGGS SHIPPED TO NEW YORK, N.Y. (EXCEPT AS NOTED) BY NORTHWEST DAIRY FORWARDING COMPANY, TOGETHER WITH BREAKDOWN SHOWING THE CONTENTS OF SUCH CARS BY LOTS, WHETHER REHANDLED AND REPACKED AT RAIL ORIGIN OR TRUCKED THERETO, AND DISTANCE OF MOVEMENT TO RAIL ORIGIN BY LOTS, FOR JANUARY, 1942 AND FOR JANUARY, JULY AND OCTOBER, 1947.

JANUARY 1942

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
1/2/42	P.F.E 92248 Minneapolis, Minnesota	112 cases eggs	Truck	250		
		76 "	"	271		
		71 "	*	--		
		90 "	truck	105		
		144 "	"	175		
		8 "	"	325		
		25 "	"	232		
		19 "	"	230		
		69 "	"	240		
1/3/42	N.W.X.6099 Minneapolis, Minnesota	156 cart butter	truck	300		
		68 cases eggs	"	300		
		84 " "	"	329		
		4 " "	*	--		
		8 " "	truck	53		
		145 " "	"	72		
1/3/42	N.P. 94754 Carlton, Minn.	85 tubs butter	*	--		
		308 cartons "	*	--		
		115 cases eggs	*	--		
		87 " "	truck	19		
1/6/42	U.R.T. 9060 Minneapolis, Minnesota	16 tubs butter	truck	275		
		15 cart "	"	184		
		6 " "	"	195		
		67 " "	"	300		
		45 " "	"	175		
		143 cases eggs	"	72		
		35 "	"	275		
		44 "	"	350		
		32 "	*	--		
		65 "	truck	232		
		28 "	"	230		
		64 "	"	113		
1/8/42	F.G.E. 18258 Carlton, Minn.	121 cases eggs	truck	19		
		90 "	*			8.06
		283 "	*			
1/8/42	P.F.E. 97006 Minneapolis, Minnesota	11 cases eggs	truck	300		
		243 "	"	72		
		90 "	"	105		
		3 "	"	53		
		96 "	*	--		
		78 "	truck	210		
		31 "	"	232		
		89 "	"	240		

1095

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles from Rail Origin	Damage Cases	Damage Amt.
1/9/42	M.D.T. 21437	250 tubs butter	*	--		
	Madison, Wis.	252 cart "	*	--		
		65 cases eggs	*	--		
1/11/42	N.W.X. 70307	50 cart butter	truck	105		
	Minneapolis,	68 "	"	258		
	Minnesota	6 cases eggs	"	53		
		124 "	"	105		
		13 "	*	--		$8.83
		8 "	truck	139		
		106 "	"	210		
		30 "	"	230		
		22 "	"	232		
1/12/42	W.F.E. 63306	89 cart butter	*	--		
	Carlton, Minn.	219 cases eggs	*	--		
		93 "	truck	19		
1/7/42	N.W.X. 7885	12 tubs butter	truck	300		
	Minneapolis,	291 cart. "	"	75		
	Minnesota	55 cases eggs	"	50		
1/14/42	U.R.T. 92518	8 cases eggs	*	--		
	Minneapolis,	4 "	truck	325		
	Minnesota	113 "	"	329		
		60 "	"	300		
		31 "	"	350		
		48 "	"	105		
		6 "	"	53		
		42 "	"	232		
		10 "	"	225		
		14 "	"	230		
		69 "	"	240		
		70 "	"	113		
1/15/42	F.G.E. 13603	122 cases eggs	truck	19		10.21
	Carlton, Minn.	9 "	"	13		
		341 "	*	--		5.27
1/16/42	U.R.T. 81676	202 tubs butter	*	--		
	Madison, Wis.	262 cart. "	*	--		
		74 cases eggs	*	--		
1/16/42	N.W.X. 70199	73 cart. butter	truck	120		2.49
	Minneapolis,	49 " "	"	132		
	Minnesota	95 cases eggs	*	--		
		6 "	truck	53		
		99 "	"	200		
		29 "	*	--		13.36
		47 "	*	--		41.78
		26 "	*	--		13.67
		15 "	truck	232		
1/17/42	F.G.E. 51005	150 tubs butter	*	--		
	Sandstone,	173 cart. "	*	--		
	Minnesota	26 cases eggs	*	--		

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles from Rail Origin	Damage Cases	Damage Amt.
1/17/42	W.F.E. 62205 Carlton, Minn.	284 cart. butter	*	--		
		157 cases eggs	*			
		7 "	truck	13		
		154 "	"	19		$3.40
1/20/42	N.W.X. 14761 Minneapolis, Minnesota	116 cases eggs	truck	329		
		3 "	"	53		
		4 "	*	--		10.95
		110 "	truck	105		
		38 "	"	210		
		2 "	"	275		
		63 "	"	232		
		56 "	"	230		
		60 "	"	240		
		40 "	"	245		
1/21/42	F.G.E. 34589 Carlton, Minn.	128 cases eggs	truck	19		
		6 "	"	13		
		267 "	*	--		
1/24/42	U.R.T. 87065 Minneapolis, Minnesota	70 cases eggs	truck	290		
		38 "	"	105		5.04
		73 "	*	--		
		20 "	*	--		12.29
		50 "	truck	64		
		24 "	"	230		
		37 "	"	232		
		66 "	"	113		
		9 "	"	240		
		26 "	"	248		
		54 "	"	350		
		72 "	"	329		
		3 "	"	53		
		10 "	"	325		
1/24/42	F.G.E. 51020 Carlton, Minn.	98 cart. butter	*	--		
		163 cases eggs	*	--		
		133 "	truck	19		15.46
1/28/42	U.R.T. 92965 Minneapolis, Minnesota	58 cart. butter	truck	250		
		54 cases eggs	"	329		
		22 "	*	--		
		57 "	truck	50		
		5 "	"	325		
		33 "	"	105		
		23 "	"	500		
		17 "	"	230		
		83 "	"	240		
		60 "	"	232		
1/28/42	F.G.E. 34242 Carlton, Minn.	47 tubs butter	*	--		
		159 cart. "	*	--		
		199 cases eggs	*	--		
		130 "	truck	19		6.90
1/30/42	N.W.X. 7480 Minneapolis (Cont'd)	82 cart. butter	truck	125		2.56
		37 cases eggs	"	232		

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles from Rail Origin	Damage Cases	Damage Amt.
1/30/42	N.W.X. 7480 (Cont'd.) Minneapolis, Minnesota	20 cases eggs	truck	230		
		73 "	"	113		
		24 "	"	325		
		114 "	*	--		
		2 "	truck	53		
		15 "	"	60		
		35 "	"	40		
1/31/42	N.W.X. 8905 Minneapolis, Minnesota	85 tubs butter	truck	325		
		83 cart. "	"	310		
		130 " "	"	210		
		2 cases eggs	*	--		
		33 "	truck	40		
		14 "	"	325		
		10 "	"	240		
		10 "	"	230		
		30 "	"	232		$10.53
		39 "	"	248		
1/31/42	F.G.E. 36460 Carlton, Minn.	10 tubs butter	*	--		
		99 cart. "	*	--		
		120 cases eggs	truck	19		16.94
		206 "	*	--		

* Indicates shipments of eggs rehandled and repacked at point of rail shipment and shipments of butter and cheese originating at rail billing point.

STATEMENT SHOWING AMOUNT OF DAMAGE ON CARS OF EGGS SHIPPED TO NEW YORK, N.Y. (EXCEPT AS NOTED) BY NORTHWEST DAIRY FORWARDING COMPANY, TOGETHER WITH BREAKDOWN SHOWING THE CONTENTS OF SUCH CARS BY LOTS, WHETHER REHANDLED AND REPACKED AT RAIL ORIGIN OR TRUCKED THERETO, AND DISTANCE OF MOVEMENT TO RAIL ORIGIN BY LOTS, FOR JANUARY, 1942 AND FOR JANUARY, JULY AND OCTOBER, 1947.

JANUARY 1947

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
1/3/47	I.C. 53807 Minneapolis, Minnesota	112 cases eggs	Truck	243	16	$ 21.72
		5 "	"	17		
		16 "	"	17		
		32 "	"	80		
		69 "	"	113	31	44.07
		26 "	"	40)	40	57.99
		70 "	"	60)		
		64 "	"	12		
		47 "	"	27		
		173 "	"	17		
		68 "	*	--	45	52.17
1/4/47	N.W.X. 1361 Minneapolis, Minnesota	44 cases eggs	*	--		
		21 "	truck	21	4	14.25
		125 "	"	250)		
		126 "	"	48)	21	33.33
		70 "	"	48)		
		46 "	*	--		
		66 "	truck	60		
		31 "	*	--	6	11.30
		14 "	truck	17		
		11 "	"	17		
		21 "	"	20		
		1 "	"	20		
		6 "	"	20		
		12 "	"	17		
		12 "	"	88		
1/4/47	M.D.T. 4005 Carlton, Minn.	343 cases eggs	"	19		
		7 "	rail		7	9.00
		40 crt. Cheese	truck	20		
		126 cases eggs	"	114	56	69.84
		56 "	"	90		
1/7/47	P.F.E. 61018 Minneapolis, Minnesota	15 crt. Butter	*	--		
		58 " "	truck	160		
		30 " "	"	243		
		100 cases eggs	"	243	1	9.52
		44 cases eggs	*	--	7	11.28
		11 cases "	truck	50		
		118 " "	"	48	16	22.51
		14 crt. Butter	"	500		
		176 cs. Eggs	"	17		
1/9/47	N.W.X. 70104 Minneapolis (Cont'd.)	15 " "	"	80		
		21 " "	"	80		
		11 " "	"	17		
		97 " "	"	--		

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
1/9/47	N.W.X. 70104	4 cases eggs	Truck	450		
	Minneapolis	117 "	"	48	54	$117.57
	(Cont'd.)	5 "	"	17		
		64 "	"	60	20	46.86
		15 "	"	17		
		56 "	"	12	34	40.42
		6 "	"	19		
		52 "	*	--		
		44 "	truck	27		
		94 "	"	113	47	67.39
1/10/47	F.G.E. 19146	75 "	"	98		
	Minneapolis,	263 "	*	--		
	Minnesota	204 "	truck	48	34	47.78
		4 "	"	17		
		3 "	"	17		
		37 "	*	--	5	9.68
1/11/47	N.R.C. 3050	9 cs. eggs	truck	50		
	Minneapolis,	32 "	*	--		
	Minnesota	110 "	truck	48	64	121.58
		92 "	"	60	33	53.74
		159 "	"	17		
		90 "	"	48		
		32 "	"	20		
		14 "	*	--		
		39 "	*	--	27	17.90
		7 "	truck	88		
1/11/47	P.F.E. 42060	176 bx. cheese	*	--		
	Duluth and	2 " butter	*	--		
	Minneapolis,	18 cs. eggs	truck	25	11	12.67
	Minnesota	109 cs. "	"	113	32	73.24
		105 cs. "	"	40		
		11 cs. "	"	17		
		171 cs. "	"	17		
1/16/47	A.R.T. 22530	21 crts. butter	*	--		
	Minneapolis,	22 " "	*	--		
	Minnesota	15 cases eggs	truck	17		
		4 "	"	17		
		49 "	*	--	8	15.63
		16	truck	80		
		7 "	"	80		
		269 "	"	48		
		59 "	"	48		
		41 cart. butter	"	500		
		22 cs. eggs	"	17		
		41 cs. "	"	60		
		5 cs. "	"	17		
		62 " "	"	12		
		14 " "	"	17		
		3 " "	"	19		
1/17/47	A.R.T. 20258	39 cart. butter	truck	500		
	Minneapolis,	8 cases eggs	"	40		
	(Cont'd.)	60 "	"	93		

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
1/17/47	A.R.T. 20258	36 cases eggs	*	--		
	Minneapolis	117 "	truck	113	62	$80.35
	(Cont'd.)	53 "	"	27		
		150 "	"	17		
		31 "	"	12		
		96 "	"	60		
1/18/47	A.R.T. 21899	25 cart. butter	*	--		
	Minneapolis,	42 "	truck	263		
	Minnesota	34 "	*	--		
		73 "	*	--		
		124 cases eggs	truck	48		
		62 "	"	48		
		93 "	"	48		
		57 "	"	41		
1/20/47	A.R.T. 17113	100 cart. butter	*	--		
	Madison,	62 "	*	--		
	Wis.	19 "	truck	19		
		243 cases eggs	"	19	18	21.68
		34 "	*	--		
		44 cart. butter	*	--		
		158 cases eggs	truck	45	8	14.09
		45 "	*	--		
1/14/47	R.D. 35576	92 cart. butter	truck	113		
	Minneapolis,	62 "	"	115		
	Minnesota	94 "	"	114		
		10 cases eggs	"	105		
		97 "	"			
1/22/47	P.F.E. 41953	15 cart. butter	"	350		
	Minneapolis,	47 cases eggs	*	--	4	5.89
	Minnesota	51 "	truck	48		
		112 "	"	113	54	60.96
		174 "	"	17		
		41 "	"	60)	36	42.73
		98 "	"	40)		
		6 "	"	17		
		69 "	"			
1/24/47	P.F.E. 17429	51 cart. butter	truck	165		
	Minneapolis,	93 cases eggs	"	165	33	41.89
	Minnesota	158 "	"	48		
		238 "	"	45		
		115 "	"	60		
1/25/47	U.R.T. 6006	20 cases cheese	"	150		
	Minneapolis,	10 cart. butter	"	150		
	Minnesota	10 cases eggs	"	50		
		28 "	"	25	4	8.02
		19 "	"	80		
		9 "	"	80		
		10 "	"	160		
		3 "	"	17		
	(Cont'd.)	13 cases eggs	truck	17		

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
1/25/47	U.R.T. 6006 Minneapolis (Cont'd.)	149 cases eggs	truck	48		
		22 "	*	--		
		19 "	truck	69		
		120 "	"	113	32	$37.21
		4 "	"	19		
		15 "	"	17		
		14 "	"	17		
		42 "	"	27	42	59.97
		22 "	"	17		
		35 "	*	--	5	9.59
		8 "	truck	50		
		29 "	"	20		
		6 "	"	88		
		42 "	*	--		
1/27/47	N.W.X. 14905 Madison, Wis.	24 cart. butter	*	--		
		41 "	truck	100		
		13 "	"	20		
		18 "	"	350		
		34 "	*	--		
		76 "	*	--		
		56 "	*	--		
		30 boxes cheese	truck	20		
		246 cases eggs	"	19	112	163.69
		6 "	"	6	1	8.71
1/28/47	M.D.T. 21541 Minneapolis, Minnesota	9 cart. butter	"	350		
		17 "	*	--		
		4 cases eggs	truck	350		
		71 "	"	93		
		49 "	*	--	10	20.40
		68 "	truck	48	59	86.38
		102 "	"	48		
		135 "	"	17		
		171 "	"	113	73	95.13
1/30/47	U.R.T. 4643 Minneapolis, Minnesota	35 cart. butter	"	150		
		89 cases eggs	"	150	1	case refused
		19 "	"	25		
		5 "	"	17		
		64 "	"	113	16	20.11
		26 "	"	69		
		51 "	"	60		
		64 "	"	12		
		6 "	"	17		
		3 "	"	19		
		169 "	"	17		
		17 "	*	--		
		10 "	truck	27		
		51 "	"	40	11	13.92

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
1/31/47	M.D.T. 22005 Minneapolis, Minnesota.	32 cart. butter	truck	350		
		75 "	"	160		
		364 cases eggs	"	48	160	215.58
		34 "	*	--		
		62 "	truck	93		
		26 "	"	20		
		12 "	"	17		
		11 "	"	17		
1/31/47	P.F.E. 61102 Minneapolis, Minnesota	320 cart. Butter	*	--		
		47 "	truck	114		
		10 "	"	150		
		73 "	"	500)		61.61
		78 "	"	390)		
		53 "	"	414		
		21 "	"	500		
		21 "	"	75		
		14 "	"	500		
		111 cases eggs	"	414		

* Indicates Shipments of eggs rehandled and repacked at point of rail shipment and shipment of butter and cheese originating at rail billing point.

STATEMENT SHOWING AMOUNT OF DAMAGE ON CARS OF EGGS SHIPPED TO NEW YORK, N.Y. (EXCEPT AS NOTED) BY NORTHWEST DAIRY FORWARDING COMPANY, TOGETHER WITH BREAKDOWN SHOWING THE CONTENTS OF SUCH CARS BY LOTS, WHETHER REHANDLED AND REPACKED AT RAIL ORIGIN OR TRUCKED THERETO, AND DISTANCE OF MOVEMENT TO RAIL ORIGIN BY LOTS, FOR JANUARY, 1942 AND FOR JANUARY, JULY AND OCTOBER, 1947.

JULY 1947

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
7/1/47	MDT 7043					
	Minneapolis,	17 ct butter	*	--	--	
	Minnesota	16 cs eggs	*	--	--	
		182 ct butter	Trk.	500	--	
		80 ct butter	"	160	--	
		33 cs eggs	"	60	--	
		375 cheese	"	60	--	
7/3/47	SFRD 33347	70 ct butter	Trk	160	--	
	Minneapolis,	34 " "	"	105	--	
	Minnesota	60 ct "	"	250	--	
		222 cs eggs	"	76	--	
		150 ct butter	*	--	--	
		54 cs eggs	*	--	--	$7.51
		19 cs "	*	--	--	
		27 cs "	*	--	--	
		44 cs "	Trk	60	--	
7/3/47	ART 20023	8 cs eggs	"	80	--	
	Minneapolis,	37 ct butter	"	150	--	
	Minnesota	26 cs eggs	"	93	--	
		23 cs "	"	93	--	
		191 cs "	*	--	118	138.49
		161 cs "	Trk	17	101	117.98
		52 cs "	"	27	--	
		8 cs "	"	82	--	
		19 cs "	"	38	--	
7/5/47	SFRD 35859	207 ct butter	Trk	500		57.86
	Minneapolis,	126 cs eggs	"	500	94	116.80
	Minnesota	28 cs "	"	38	(39	59.36
		14 cs "	"	17	(	
		34 cs "	"	17	--	
7/5/47	NRC 13216	177 ct butter	*	--	--	
	Madison, Wis.	26 ct "	*	--	--	
		111 cs eggs	Trk	19		253.03
		31 cs "	*	--		) 93.59
		10 cs "	*	--		)
		131 ct "	Trk	500	--	
7/9/47	FGE 43575	60 cs eggs	*	--	60	109.51
	Minneapolis,	19 cs "	Trk	25	--	
	Minnesota	2 cs "	*	--	--	
	(Cont'd.)	9 cs "	*	--	--	
		43 cs "	Trk	60	--	
		18 cs "	*	--	--	
		26 cs "	Trk	38	--	.77

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
7/9/47	FGE 43575	50 ct butter	*	--	--	
	Minneapolis,	30 ct "	Trk	250	--	
	Minnesota	70 ct "	Trk	160	--	
	(Cont'd.)	23 bx cheese	"	150	--	
		116 ct butter	"	500	--	
		125 bx cheese	"	60	--	
7/9/47	FGE 11342	53 ct butter	*	--	--	
	Minneapolis,	12 ct "	*	--	--	
	Minnesota	22 ct "	*	--	--	
		12 ct "	*	--	--	
		49 cs eggs	Trk	93		$24.84
		204 cs "	*	--		99.34
		225 cs "	Trk	40	--	
7/9/47	MPE 49834	192 ct butter	*	--	--	
	Carlton,	94 cs eggs	*	--	--	
	Minnesota	27 ct butter	Trk	20	--	
		12 bx cheese	"	20	--	
7/10/47	MDT 4965	311 ct butter	Trk	500	--	
	Minneapolis,	34 ct "	"	105	--	
	Minnesota	7 ct "	"	150	--	
		10 bx cheese	"	150	--	
		158 cs eggs	"	17	--	420.95
		22 cs "	*	--	--)	
		22 cs "	*	--	--)	118.71
7/11/47	FGE 51312	90 cs eggs	Trk	150	--	
	Minneapolis,	70 ct butter	"	160	--	
	Minnesota	10 cs eggs	"	80	--	
		8 cs eggs	"	25	--	
		234 cs eggs	"	76	--	199.13
		10 bx cheese	"	150	--	
		18 ct butter	"	150	--	
		22 cs eggs	"	38	--	
		69 cs "	*	--	26	73.46
		36 cs "	*	--	--	
7/11/47	MDT 22085	54 cs eggs	Trk	134	60	(82.23
	Duluth,	118 cs eggs	"	139		(
	Minnesota	87 cs eggs	"	113	43	68.55
		25 cs eggs	"	232	45	(114.07
		47 cs eggs	"	220		(
		47 cs eggs	"	230	--	
7/15/47	SFRD 7762	40 cs eggs	Trk	275	19	28.76
	Minneapolis,	16 cs "	"	17	15	20.39
	Minnesota	13 cs "	*	--	12	22.81
	(Cont'd.)	19 cs "	Trk	160	--	
		32 ct butter	*	--	--	
		41 ct "	*	--	--	
		29 cs eggs	*	--	--	
		195 ct butter	*	--	--	137.78
		69 ct "	Trk	500	--	
		131 ct "	"	75	9	10.80

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage	
					Cases	Amt.
7/15/47	SFRD 7762 Minneapolis (Cont'd.)	15 cs eggs	Trk	40	--	
		61 cs "	"	60	--	
7/14/47	LDT 46165 Duluth & Minneapolis	180 cs. eggs	*	--	--	$83.24
		152 cs "	Trk	17	--	65.41
		17 cs "	*	--	--	
		21 ct butter	*	--	--	
		170 bx cheese	*	--	--	
7/16/47	FGE 38349 Minneapolis & Duluth	70 ct butter	Trk	160	--	
		16 cs eggs	"	80	--	(
		27 cs "	"	83	--	(
		21 cs "	"	83	--	(131.37
		27 cs "	"	38	--	(
		13 cs "	*	--	--	16.77
		33 cs "	*	--	--	
		33 cs "	Trk	60	--	
		6 cs "	Trk	40	--	
		420 bx cheese	"	60	--	
7/17/47	FGE 13658 Minneapolis	44 ct butter	Trk	105	--	
		6 cs eggs	"	83	--	
		12 cs "	"	12	--	
		34 cs "	"	230	12	18.47
		142 cs "	"	329	81	111.67
		116 cs "	"	321	146	(296.50
		74 cs "	"	232	--	(
		32 cs "	"	134	--	(122.63
		110 cs "	"	139	--	(
7/18/47	ART 17600 Minneapolis, Minnesota	5 cs eggs	Trk	25	--	
		125 cs "	Trk	120	--	) 395.51
		207 cs "	Trk	76	--	)
		20 cs "	*	--	--	25.24
		26 cs "	Trk	150	--	--
		24 cs "	Trk	38	--	
		196 ct butter	*	--	--	
7/21/47	PFE 92252 Minneapolis, Minnesota	61 ct butter	Trk	160	--	
		46 ct "	"	150	--	
		25 bx cheese	"	150	--	
		33 ct butter	*	--	--	
		58 ct "	Trk	500	--	
		16 cs eggs	"	40	--	
		54 cs "	"	60	--	
		83 cs "	*	--	28	36.64
		54 cs "	*	--	24	40.47
		2 cs "	*	--	--	
		3 cs "	*	--	--	
7/23/47	PFE 40209 Minneapolis, Minnesota (Cont'd.)	43 ct butter	*	--	--	
		41 ct "	*	--	--	
		127 ct "	Trk	500	--	
		71 ct "	"	500	--	
		74 ct "	"	160	--	

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amount
7/23/47	PFE 40209	19 cs eggs	Trk	60	--	
	Minneapolis	9 cs "	*	--	)	
	(Cont'd.)	1 cs "	*	--	4)	$6.22
		8 cs "	*	--	)	
		12 cs "	Trk	80	)	
		29 cs "	"	38	43)	62.91
		146 cs "	Trk	17	)	
		34 cs "	"	40	--	
7/22/47	FGE 35418	100 cs	"	19	--	
	Carlton,	200 ct butter	*	--	--	
	Minnesota	80 cs eggs	*	--	23	24.82
		34 ct butter	Trk	20	--	
		80 bx cheese	"	20	--	
7/24/47	SFRD 38580	21 ct butter	*	--	--	
	Minneapolis,	14 cs eggs	*	--	14	24.96
	Minnesota	111 ct butter	Trk	75	--	
		92 ct "	"	250	--	
		70 ct "	*	--	--	
		25 ct "	*	--	--	
		3 ct "	*	--	--	
		5 ct "	*	--	--	
		46 cs eggs	Trk	83	48)	65.10
		12 cs "	"	17	)	
		15 cs "	*	--	12	16.28
		9 cs "	Trk	80	--	
		160 cs "	*	--	61	77.54
		100 bx cheese	Trk	60	--	
7/25/47	PFE 42895	31 ct butter	*	--	--	
	Minneapolis,	50 ct "	Trk	160	--	
	Minnesota	203 cs eggs	"	76	--	
		52 cs "	"	20	--	
		22 cs "	*	--	--	
		24 cs "	Trk	38	--	
		53 cs "	*	--	--	
		9 cs "	Trk	20	--	
		40 cs "	"	27	--	
		54 cs "	"	60	--	
7/26/47	SFRD 34599	197 cs eggs	Trk	230	)	
	Carlton,	109 cs "	"	232	198)	322.30
	Minnesota	33 cs "	"	224	9	13.80
		32 cs "	"	150	)	
		72 cs "	"	139	30)	45.66
7/28/47	ART 86632	200 cs "	*	--		237.22
	Madison,	387 ct butter	*	--	--	
	Wisconsin					
7/28/47	MDT 41205	98 ct butter	Trk	500	--	
	Minneapolis,	21 ct "	*	--	--	80
	Minnesota	13 cs eggs	*	--	--	
		1 ct butter	Trk	150	--	
	(Cont'd.)	8 bx cheese	"	"	--	

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage	
					Cases	Amount
7/28/47	MDT 41205	3 cs eggs	Trk	19	--	
	Minneapolis,	62 cs "	"	27	33	$83.03
	Minnesota	94 cs "	"	139	)	22.80
	(Cont'd.)	21 cs "	"	134	)	
		89 cs "	"	113	37	57.06
		36 cs "	"	230	25	58.36
		84 cs "	"	322	49	76.36
7/30/47	FGE 19099	70 ct butter	Trk	160		12.80
	Minneapolis,	323 cs eggs	Trk	38	157	318.97
	Minnesota	144 cs "	"	17	48	93.07
		18 cs "	"	12	--	
7/30/47	MCLX 70357	97 ct butter	Trk	75	7	8.40
	Duluth &	20 cs eggs	Trk	80	--)	
	Minneapolis	15 cs "	"	83	--)	84.68
		39 cs "	Trk	38	--)	
		112 cs "	*	--	--)	
		28 cs "	"	--	--)	157.27
		8 cs "	Trk	25	--	
		20 cs "	"	60	--	
		4 cs "	"	40	--	
		34 cs "	"	27	--	
		14 cs "	"	80	--	
		25 bx cheese	"	60	--	
		126 bx cheese	*	--	--	

* Indicates shipments of eggs rehandled and repacked at point of rail shipment and shipments of butter and cheese originating at rail billing point.

STATEMENT SHOWING AMOUNT OF DAMAGE ON CARS OF EGGS SHIPPED TO NEW YORK, N.Y. (EXCEPT AS NOTED) BY NORTHWEST DAIRY FORWARDING COMPANY, TOGETHER WITH BREAKDOWN SHOWING THE CONTENTS OF SUCH CARS BY LOTS, WHETHER REHANDLED AND REPACKED AT RAIL ORIGIN OR TRUCKED THERETO, AND DISTANCE OF MOVEMENT TO RAIL ORIGIN BY LOTS, FOR JANUARY, 1942 AND FOR JANUARY, JULY AND OCTOBER, 1947.

OCTOBER 1947

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amount
10/1/47	MDT 21704	326 cs eggs	Trk	250		$230.08
	Duluth &	31 ct butter	*	--		-
	Minneapolis	326 bx cheese	*	--		-
10/1/47	PFE 27394	10 cs eggs	*	--		10.32
	Minneapolis,	149 cs "	Trk	50		150.00
	Minnesota	61 cs "	"	20		-
		115 cs "	"	50		124.96
		5 cs "	"	40		-
		18 cs "	"	150		28.05
		223 cs "	*	-		221.75
		57 cs "	*	-		-
10/2/47	LDT 3016	134 cs eggs	Trk	17		131.68
	Minneapolis,	32 cs "	*	-	86	30.89
	Minnesota	34 cs "	Trk	27	12	18.41
		104 cs "	"	139		-
		33 cs "	"	134	12	29.48
		32 cs "	"	230		)
		21 cs "	"	230	29	) 57.73
		60 cs "	"	329		-
		31 cs "	"	27		-
		100 cs "	"	38	44	83.00
		26 cs "	*	-		-
		25 ct butter	Trk	150		-
10/4/47	PFE 60231	106 ct butter	*	-		-
	Minneapolis,	48 cs eggs	Trk	100	33	67.27
	Minnesota	20 cs "	"	120		-
		75 cs "	"	120		)
		10 cs "	"	80		)215.37
		53 cs "	Trk	38		)
		12 cs "	*	-		)68.01
		32 cs "	*	-		)
		6 cs "	Trk	25		)
		16 cs "	"	60	3	) 91.83
		53 cs "	"	150		)
		3 cs "	"	83		-
		26 cs "	*	-	12	22.67
		12 cs "	Trk	12		-
		40 bx cheese	"	150		-
		43 cs eggs	"	139		-
		40 cs "	"	113	36	121.64
		21 cs "	"	134	7	20.18
10/6/47	PFE 50438	420 bx butter	*	-		-
	Madison,	90 cs eggs	Trk	50		-
	Wisconsin	110 cs "	*	-		265.95

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles from Rail Origin	Damage Cases	Damage Amt.
10/8/47	PFE 91157	125 bx cheese	Trk	60		
	Minneapolis,	7 cs eggs	"	17	)	
	Minnesota	11 cs "	"	17	24)	$40.08
		41 cs "	Trk	80	)	
		14 cs "	*	-		10.02
		10 cs "	Trk	160		-
		91 ct butter	Trk	225		-
		57 ct "	"	500		-
		22 cs eggs	"	19		-
		80 cs "	"	38	)	
		61 cs "	"	60	35)	39.63
		6 cs "	"	10		-
		6 cs "	"	60		-
		110 bx cheese	"	150		-
		47 cs eggs	"	139		-
		30 cs "	"	230	19	41.30
10/9/47	ART 18217	23 box butter	Trk	75		
	Minneapolis,	41 cs eggs	*	-		170.60
		246 cs "	*	-		-
		64 cs "	Trk	50		142.67
		235 cs "	*	-		210.05
		15 bx cheese	Trk	150		-
10/11/47	IC 50254	15 ct butter	*	-		-
	Minneapolis,	27 ct "	*	-		-
	Minnesota	42 ct "	Trk	230	6	16.63
		23 ct "	"	250		-
		33 cs eggs	*	-	9	20.37
		120 cs "	Trk	75	)	
		17 cs "	"	17	50)	87.55
		60 cs "	"	38	)	
		19 cs "	*	-	)	
		30 cs "	*	-	)	21.89
		45 cs "	Trk	113	30	67.63
		30 cs "	"	139		-
		7 cs "	"	80		-
		20 cs "	"	60	13	30.48
		60 cs "	"	150	46	97.76
		53 cs "	"	38		-
		30 bx cheese	"	150		-
10/11/47	IC 53417	344 ct butter	*	-		-
	Madison,	224 cs eggs	Trk	250	138	231.14
10/13/47	PFE 92917	278 cs eggs	*	-		-
	Minneapolis,	440 bx butter	Trk	150		-
	Minnesota	128 cs eggs	"	150		31.26
10/15/47	FGE 21801	25 ct butter	*	-		-
	Minneapolis,	15 ct "	Trk	500		-
	Minnesota	91 ct "	Trk	250		-
		19 cs eggs	*	-		-
		16 cs "	Trk	60		25.20
		24 cs "	*	-	)	
	(Cont'd.)	11 cs "	*	-	41)	79.81
		16 cs "	*	-	)	

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
10/15/47	FGE 21801 Minneapolis, Minnesota (Cont'd.)	151 cs eggs	Trk	150	76	$162.30
		7 cs "	*	-		-
		31 cs "	Trk	113		-
		25 bx cheese	"	150		-
		100 bx cheese	"	60		-
		62 cs eggs	"	60	62	123.90
		53 cs "	"	38		
10/16/47	SFRD 8937 Duluth, Minn.	195 bx cheese	*	-		-
		135 cs eggs	Trk	40		40.00
		192 cs "	*	-		294.46
10/16/47	FGE 33066 Minneapolis, Minnesota	33 ct butter	Trk	105	7	7.05
		139 cs eggs	"	17	55	76.73
		50 cs "	"	27		-
		4 cs "	"	83		-
		40 cs "	"	80		-
		276 cs "	*	-	107	266.54
		41 cs "	Trk	27		-
		12 cs "	"	17		-
		4 cs "	"	25		-
10/17/47	PFE 41134 Minneapolis, Minnesota	83 cs "	"	120		
		6 cs "	"	80		
		12 cs "	"	17	88	176.01
		93 ct butter	*	-		
		133 cs eggs	Trk	38		
		22 ct butter	"	250		
		50 ct "	"	230	8	18.23
		16 ct "	"	120		
		40 bx cheese	"	60		
		32 cs eggs	*	-	8	13.32
		230 cs "	Trk	150		374.16
10/18/47	MX 3008 Minneapolis, Minnesota	128 bx cheese	*	-		
		12 ct butter	*	-		
		22 ct "	*	-		
		120 cs eggs	Trk	250		
		74 cs eggs	"	38	95	136.30
		43 cs eggs	"	38		
		30 cs "	"	40		
		4 cs eggs	"	27		
		14 cs "	"	70		
		32 cs "	"	60	13	34.08
		31 cs "	"	17		
10/18/47	ART 15129 Madison, Wisconsin	413 ct butter	*	-		
		142 cs eggs	Trk	250		359.37
10/22/47	PFE 42700 Minneapolis, Minnesota	64 bx butter	Trk	250		
		55 cs eggs	"	50		
		100 cs "	*	-		143.38
		68 cs "	*	-		
	(Cont'd.)	120 cs "	Trk	40		131.20

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles From Rail Origin	Damage Cases	Damage Amt.
10/22/47	PFE 42700	12 cs eggs	Trk	10		
	Minneapolis,	107 cs "	"	150		$15.56
	Minnesota	32 cs "	"	20		
	(Cont'd.)	25 bx cheese	"	150		
10/23/47	PFE 63376	19 ct butter	"	105		
	Minneapolis,	103 cs eggs	"	38		)
	Minnesota	72 cs "	"	60		)217.94
		7 cs "	"	80		
		163 cs "	"	17	85	121.64
		40 cs "	*	-		29.84
		45 cs "	Trk	83		
		43 cs "	"	105		
		46 cs "	"	27		
		23 cs "	"	17		
		50 bx cheese	"	150		
10/24/47	WFE 49991	72 ct butter	"	230		
	Minneapolis,	145 cs eggs	"	250		)
	Minnesota	89 cs "	"	38	116	) 285.86
		13 cs "	"	17		
		80 bx cheese	"	150		
		70 cs eggs	"	27	45	101.62
		37 cs "	"	27		)
		31 cs "	"	60	27	) 61.78
		87 cs "	"	150	49	121.08
10/25/47	PFE 97343	39 bs butter	*	-		
	Minneapolis,	66 cs eggs	Trk	50		
	Minnesota	37 "	*	-		
		338 cs eggs	*	-		271.05
10/25/47	MDT 41680	255 ct butter	*	-		
	Madison,	61 cs eggs	Trk	120		)
	Wisconsin	9 cs "	"	33	38	) 58.52
		8 cs "	"	60		
		196 cs "	"	40	89	184.78
		35 cs "	"	17		
		5 cs "	"	17		
10/28/47	PFE 34979	71 cs eggs	Trk	40	71	35.55
	Minneapolis,	125 cs "	"	38	124	257.53
	Minnesota	120 cs "	"	75	70	128.32
		6 cs "	"	12		
		59 cs "	"	150	27	58.40
		41 cs "	"	12		
		44 cs "	"	38		
		133 cs "	"	69		
10/29/47	WFE 65621	2 cs "	"	200		
	Minneapolis,	5 cs "	"	20		
	Minnesota	28 " "	"	150		34.32
		121 bx cheese	"	"		
		13 bx butter	*	-		
	(Cont'd.)	260 cs eggs	*			224.70

Date	Car No. and Origin	Contents	Received at Rail Origin Via	Miles from Rail Origin	Damage Cases	Damage Amt.
10/29/47	WFE 65621 Minneapolis, Minnesota	50 cs eggs	Trk	50		
		19 cs "	*	-		47.60
		25 cs "	*	10		
		23 cs "	*			
10/31/47	PFE 7005 Minneapolis, Minnesota	126 cs eggs	Trk	50		
		58 cs "	"	50		
		49 cs "	*	-		168.32
		43 cs "	Trk	40		
		116 cs "	"	50		
		228 cs "	*	-		
10/31/47	SFRD 38405 Minneapolis, Minnesota	10 ct butter	Trk	120		
		64 cs eggs	"	120		
		35 ct butter	"	105		
		25 ct "	"	250		
		116 cs eggs	"	250		74.45
		51 cs "	*	-		
		55 cs "	*	-	82	68.72
		12 cs "	Trk	83		
		45 bx cheese	"	150		
		36 cs eggs	*	-	8	14.72
		6 cs "	Trk	33		
		8 cs "	Trk	27	6	11.86
		69 cs "	"	38	15	43.95
		26 cs "	"	17		
		45 cs "	"	20		
		11 cs "	"	30		
		82 bx cheese	*	-		

* Indicates shipments of eggs rehandled and repacked at point of rail shipment and shipments of butter and cheese originating at rail billing point.

[fol. 88] Effective December 1, 1946

EXHIBIT 19—WITNESSS HAMANN

UNITED STATES STANDARDS FOR QUALITY OF INDIVIDUAL SHELL EGGS

Order of Promulgation of Standards

United States Department of Agriculture
Office of the Secretary
Washington, D. C.

By virtue of the authority vested in the Secretary of Agriculture by the provision in the act of Congress entitled "An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1947 and for other purposes," approved June 22, 1946 (Public Law 422—79th Congress) reading in part as follows: "For acquiring and diffusing among the people of the United States useful information relative to the needed supplies, standardization, classification, grading, preparation for market, handling, transportation, storage, and marketing of farm and food products, including the demonstration and promotion of the use of uniform standards of classification of American farm and food products throughout the world," the following standards are promulgated as "Official United States Standards for Quality of Individual Shell Eggs," to be employed for the grading and certification of shell eggs by official graders of the United States Department of Agriculture, and to be in force and effect on December 1, 1946. These standards shall supersede all standards for quality of individual shell eggs previously promulgated under such authority.

Specifications for Official United States Standards for Quality of Individual Shell Eggs

U. S. Standards for Quality of Individual Eggs with Clean Unbroken Shells:[1]

(1) *AA Quality*—The shell must be clean, unbroken, and practically normal. The air cell must not exceed

[1] Interior egg quality specifications for the Official Standards for Quality of Individual Shell Eggs are based on

⅛ inch in depth and be practically regular. The white must be clear and firm so that the yolk appears well centered and its outline only slightly defined when the egg is twirled before the candling light. The yolk must be free from apparent defects.

(2) *A Quality*—The shell must be clean, unbroken, and practically normal. The air cell must not exceed 2/8 inch in depth and must be practically regular. The white must be clear and at least reasonably firm so that the yolk appears at least fairly well centered and its outline only fairly well defined when the egg is twirled before the candling light. The yolk must be practically free from apparent defects.

[fol. 89] (3) *B Quality*—The shell must be clean, unbroken and may be slightly abnormal. The air cell must not exceed ⅜ inch in depth and may show total movement not in excess of ⅜ inch. However, an air cell not over 2/8 inch in depth may be free. The white must be clear but may be slightly weak so that the yolk may appear off center with its outline well defined when the egg is twirled before the candling light. The yolk may appear slightly enlarged and slightly flattened and may show other definite but not serious defects.

(4) *C Quality*—The shell must be clean, unbroken, and may be abnormal. The air cell may be over ⅜

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the use of a candling light delivering approximately 350 to 450 foot candles of light at the candling opening. The usual box type of candling light, without reflector, using a clean 40-watt frosted bulb about 1½ inches from and in direct line (direct light) behind the opening which should be approximately 1⅛ inches in diameter or a clean 60-watt frosted bulb immediately above and 1½ inches behind the opening (indirect light), provides approximately 310 foot candles of light at the opening. A 60-watt bulb in a direct light candler or a 75-watt bulb in an indirect light candler provides approximately 380 foot candles of light at the opening.

Reference to "usual box type of candling light" should not be construed as restricting use to that type only. Any type or make of candler may be used so long as the resulting light is the same.

inch in depth and may be bubbly or free. The white may be weak and watery so that the yolk may appear off center and its outline plainly visible when the egg is twirled before the candling light. The yolk may appear dark, enlarged, and flattened and may show clearly visible germ development but no blood due to such development. It may show other serious defects that do not render the egg inedible. Small blood clots or spots may be present.

U. S. Standards for Quality of Individual Eggs with Dirty Unbroken Shells:

(5) *Stained*—Individual egg that has no adhering dirt and no more than a combined total of 1/8 of the shell surface stained or soiled.

(6) *Dirty*—Individual egg that has adhering dirt or more than a combined total of 1/8 of the shell surface stained or soiled.

U. S. Standards for Quality of Individual Eggs with Checked or Cracked Shells:

(7) *Check*—Individual egg that has a broken shell or crack in the shell but with no leakage of the contents.

(8) *Leaker*—Individual egg that has a broken shell or crack in the shell and shell membranes with the contents exuding or free to exude through the shell.

[fol. 90] Explanation of Terms

(9) The Official United States Standards for Quality of Individual Shell Eggs are applicable to eggs that are the product of the domesticated chicken hen and are in the shell.

Terms Descriptive of Shell

(10) *Clean*—A shell that is free from foreign matter and from stains or discolorations that are readily visible. Eggs with only very small specks or stains may be considered clean, if such eggs are not of sufficient number in a package to detract appreciably

from its appearance. Eggs that show traces of processing oil on the shell are considered clean unless the shell is otherwise soiled.

(11) *Stained*—A shell with stained or soiled spots that together cover not more than 1/8 of the shell surface but without adhering dirt.

(12) *Dirty*—A shell with adhering dirt or with stained or soiled spots that together cover more than 1/8 of the shell surface.

(13) *Unbroken*—A shell that is free from checks or breaks.

(14) *Checked or Cracked*—A shell that has an actual break but its membranes are unbroken and its contents do not leak.

(15) *Leaker*—A leaker is an egg in which the shell and shell membranes are broken to the extent that the egg contents are exuding or free to exude through the shell.

(16) *Practically Normal* (AA) (A)—A shell that approximates the usual shape and that is of good even texture and strength and free from rough areas or thin spots. Slight ridges and rough areas that do not materially affect the shape, texture and strength of the shell, are permitted.

(17) *Slightly Abnormal* (B)—A shell that may be somewhat unusual in shape or that may be slightly faulty in texture or strength. It may show definite ridges but no pronounced thin spots or rough areas.

(18) *Abnormal* (C)—A shell that may be decidedly misshapen or faulty in texture or strength or that may show pronounced ridges, thin spots or rough areas.

[fol. 91] Terms Descriptive of the Air Cell

(19) *Depth of Air Cell* (air space between shell membranes normally in the large end of the egg)—The depth of the air cell is the distance from its top to its bottom when the egg is held air cell upward.

(20) *Practically Regular* (AA) (A)—An air cell that maintains a practically fixed position in the egg and shows a fairly even outline with no more than 1/8 inch movement in any direction as the egg is rotated.

(21) *Movement Not in Excess of 3/8 inch* (B)—An air cell that shows a total movement not in excess of 3/8 inch in any direction as the egg is rotated.

(22) *Free Air Cell* (B) (C)—An air cell that moves freely toward the uppermost point in the egg as the egg is rotated slowly.

(23) *Bubbly Air Cell* (C)—A ruptured air cell resulting in one or more small separate air bubbles usually floating beneath the main air cell.

Terms Descriptive of the White

(24) *Clear* (AA) (A) (B)—A white that is free from discoloration or from any foreign bodies floating in it. (Prominent chalazas should not be confused with foreign bodies such as spots or blood clots).

(25) *Firm* (AA)—A white that is sufficiently thick or viscous to permit but limited movement of the yolk from the center of the egg, thus preventing the yolk outline from being more than slightly defined or indistinctly indicated when the egg is twirled.

(26) *Reasonably Firm* (A)—A white that is somewhat less thick or viscous than a firm white. A reasonably firm white permits the yolk to move somewhat more freely from its normal position in the center of the egg and approach the shell more closely. This would result in a fairly well defined yolk outline when the egg is twirled.

(27) *Slightly Weak* (B)—A white that is lacking in thickness or viscosity to an extent that permits the yolk to move quite freely from its normal position in the center of the egg. A slightly weak white will cause the yolk outline to appear well defined when the egg is twirled.

(28) *Weak and Watery* (C)—A white that is thin and generally lacking in viscosity. A weak and watery white permits the yolk to move freely from the center of the egg and to approach the shell closely, thus causing the yolk outline to appear plainly visible and dark when the egg is twirled.

[fol. 92] (29) *Blood Clots and Spots* (Not due to germ development)—Blood clots or spots on the surface of the yolk or floating in the white. These blood clots may have lost their characteristic red color and appear as small spots or foreign material commonly referred to as meat spots. Such blood clots or spots are incorporated in the egg during its formation or after the yolk leaves the ovary. If they are small (not over 1/8 inch in diameter) the egg may be classed as C quality. If larger and/or showing diffusion of blood in the white surrounding them, the egg shall be classified as loss.

(30) *Bloody White* (Loss)—An egg, the white of which has blood diffused through it. Such a condition may be present in new-laid eggs. Eggs with bloody whites are classed as loss.

Terms Descriptive of Yolk

(31) *Well Centered* (AA)—A yolk that occupies the center of the egg and moves only slightly from that position as the egg is twirled.

(32) *Fairly Well Centered* (A)—A yolk that is not more than one-fourth of the distance from its normal central position toward the ends of the egg and swings not more than one-half of the distance from its normal position towards the sides of the egg as it is twirled.

(33) *Off Center* (B) (C)—A yolk which is distinctly above or below center and swings close to the sides of the egg as it is twirled.

(34) *Outline Slightly Defined* (AA)—A yolk outline that is indistinctly indicated and appears to blend into the surrounding white as the egg is twirled.

(35) *Outline Fairly Well Defined* (A)—A yolk outline that is discernible but not clearly outlined as the egg is twirled.

(36) *Outline Well Defined* (B)—A yolk outline that is quite definite and distinct as the egg is twirled.

(37) *Outline Plainly Visible* (C)—A yolk outline that is clearly visible as a dark shadow when the egg is twirled.

(38) *Slightly Enlarged and Slightly Flattened* (B)—A

yolk in which the yolk membranes and tissues have weakened somewhat causing it to appear slightly enlarged and slightly flattened.

(39) *Enlarged and Flattened* (C)—A yolk in which the yolk membranes and tissues have weakened and moisture has been absorbed from the white to such an extent that it appears definitely enlarged and flat.

(40) *Free From Defects* (AA)—A yolk that shows no spots or areas on its surface indicating the presence of germ development or other defects.

[fol. 93] (41) *Practically Free from Defects* (A)—A yolk that shows no germ development but may show other very slight defects on its surface.

(42) *Definite But Not Serious Defects* (B)—A yolk that may show definite spots or areas on its surface but with only slight indication of germ development or other pronounced or serious defects.

(43) *Other Serious Defects* (C)—A yolk that shows well developed spots or areas and other serious defects, such as olive yolks, which do not render the egg inedible.

(44) *Clearly Visible Germ Development* (C)—A development of the germ spot on the yolk of a fertile egg that has progressed to a point where it is plainly visible as a definite circular area or spot with no blood in evidence.

(45) *Blood Due to Germ Development* (Inedible)—Blood caused by development of the germ in a fertile egg to the point where it is visible as definite lines or blood ring. Such eggs are classified as inedible.

General Terms

(46) *Loss*—Eggs that are inedible, smashed, broken so that contents are leaking, contaminated, or containing bloody whites, large blood spots, large unsightly meat spots, or other foreign material are classed as "Loss."

(47) *Inedible Eggs*—Under the Food, Drug, and Cosmetic Act, eggs that are filthy, putrid, or decomposed, or otherwise unfit for food in whole or in part, are adulterated. Eggs of the following descriptions are classed as inedible; black rots, white rots, mixed rots (addled eggs), sour eggs,

eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring stage), and any other eggs that are filthy, decomposed, putrid.

Done at Washington, D. C. this 5th day of September, 1946.

Acting Secretary of Agriculture, Charles T. Brown.

Effective: December 1, 1946

SUMMARY OF UNITED STATES STANDARDS FOR QUALITY OF INDIVIDUAL SHELL EGGS
(Figures in parentheses refer to paragraph number of Explanation of Terms on pages 3 to 6)

	Specifications for Each Quality Factor							
Quality Factor	AA Quality	A Quality	B Quality	C Quality	Stained	Dirty	Check	Leaker
Shell	Clean(10) unbroken (13) practically normal (16)	Clean (10) unbroken(13) practically normal (16)	Clean(10) unbroken(13) may be slightly abnormal (17)	Clean (10) unbroken (13) may be abnormal (18)	Unbroken(13) may be stained or soiled (11)	Unbroken(13) may be dirty (12)	Checked or cracked but nor leaking (14)	Broken so contents are leaking(15)
Air Cell	1/8 inch or less in depth (19) practically regular (20)	2/8 inch or less in depth (19) practically regular (20)	3/8 inch or less in depth(19) may show movement not over 3/8 inch (21)If not over 2/8 inch may be free(22)	May be over 3/8 inch in depth (19) may be free or bubbly (22) (23)				
White	Clear (24) Firm (25)	Clear (24) May be reasonably firm (26)	Clear (24) may be slightly weak (27)	Clear (24) may be weak & watery (28) small blood clots or spots may be present (29)				
Yolk	Well centered(31) outline slightly defined(34) free from defects(40)	May be fairly well centered (32) outline may be fairly well defined(35)practically free from defects(41)	May be off center(33) outline may be well defined(36) may be slightly enlarged and flattened (38) definite butnot serious defects (42)	May be off center(33) outline may be plainly visible(37) may be enlarged and flattened(39) may show clearly visible germ development but no blood(43) may show other serious defects(44)				

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EXHIBIT NO 20
Witness Hamann

Effective: February 1, 1948

UNITED STATES DEPARTMENT OF AGRICULTURE
PRODUCTION AND MARKETING ADMINISTRATION

TENTATIVE U. S. SPECIFICATIONS AND WEIGHT CLASSES
FOR WHOLESALE GRADES FOR SHELL EGGS

(Based on U. S. Standards for Quality of Individual Shell Eggs)

U. S. SPECIALS ___% AA Quality - Shall consist of eggs of which at least 20 percent are AA Quality. The balance may be A Quality except for a permitted tolerance of 27 edible eggs (7.5 percent) per 30-dozen case, which may be B Quality, C Quality, Stained, Dirties, or Checks in any combination and 6 eggs (1.7 percent) loss. The actual percentage of AA Quality shall be stated in the grade name.

U. S. EXTRAS ___% A Quality - Shall consist of eggs of which at least 20 percent are A Quality or better. The balance may be B Quality except for a permitted tolerance of 42 edible eggs (11.7 percent) per 30-dozen case, which may be C Quality, Stained, Dirties, or Checks in any combination and 8 eggs (2.2 percent) loss.1/ The actual percentage of A Quality shall be stated in the grade name.

U. S. STANDARDS ___% B Quality - Shall consist of eggs of which at least 20 percent are B Quality or better. The balance may be C Quality or Stained2/, except for a permitted tolerance of 42 edible eggs (11.7 percent) per 30-dozen case, which may be Dirties or Checks in any combination and 10 eggs (2.8 percent) loss1/. The actual percentage of B Quality shall be stated in the grade name.

U. S. TRADES ___% C Quality - Shall consist of eggs of which at least 83.3 percent are C Quality or Stained or better. The permitted tolerance may consist of not more than 42 eggs (11.7 percent) per 30-dozen case, which may be Dirties or Checks in any combination and 18 eggs (5 percent) loss. The actual percentage of C Quality or Stained shall be stated in the grade name.

U. S. STAINED - Eggs with stained shells but otherwise conforming to the grade specifications for U. S. Extras or U. S. Standards, may be classified as "Stained" in their respective U. S. Grade. (Examples of grade identification: U. S. Stained Extras ___% A Quality and U. S. Stained Standards ___% B Quality.)

U. S. DIRTIES - Shall consist of edible eggs which may have dirty shells except for a permitted tolerance of 42 U. S. Checks (11.7 percent) per 30-dozen case and 18 eggs (5 percent) loss.

U. S. CHECKS - Shall consist of edible eggs which may have checked shells except for a permitted tolerance of 18 eggs per 30-dozen case (5 percent) loss.

NO GRADE - Eggs of possible edible quality that fail to meet the requirements of an Official or Tentative U. S. Grade or that have been contaminated by smoke, chemicals, or other foreign material that has seriously affected the character, appearance, or flavor of the eggs are classed as "No Grade."

1/ For the period from August 16 through January 31 the tolerance for loss may be increased to 3.3 percent or 12 eggs per 30-dozen for U. S. Extras, and 4.2 percent or 15 eggs per 30-dozen for U. S. Standards on refrigerator eggs only.

2/ Not more than 40 percent stained eggs are permitted in U. S. Standards. If the quantity is in excess of 40 percent, the eggs shall be classified as U. S. Stained Standards.

Weight Classes for U. S. Wholesale Grades for Shell Eggs

Size or weight class	Average net weight per 30 dozen	Minimum net weight per 30 dozen	Basic minimum weight for individual eggs	Permitted tolerance 10 percent of individual eggs (minimum weight)
	Pounds	Pounds	Ounces per dozen	Ounces per dozen
Extra large	50½	50	26	Under 26 but not under 24
Large	45	44	23	Under 23 but not under 21
Medium	39½	39	20	Under 20 but not under 18
Small	34	No limit	No limit	No limit

These weight classes apply to all wholesale grades except U.S. Dirties and U.S. Checks for which there are no weight requirements.

These Tentative U.S. Specifications and Weight Classes for Wholesale Grades for Shell Eggs supersede, effective February 1, 1948, all U.S. Standards and Weight Classes for Wholesale Grades for Shell Eggs previously issued.

Approved: September 17, 1947

Assistant Administrator (Acting)
Production and Marketing Administration

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Summary of Specifications for U. S. Consumer Grades for Shell Eggs

U.S. Consumer Grade	At least 80 percent (lot average) 1/ must be —	Tolerance permitted 2/	
		Percent	Quality
U.S. Grade AA	AA Quality	15 to 20, not over 5 3/	A B, C, Stained, or Check
U. S. Grade A	A Quality or better	15 to 20, not over 5 3/	B C, Stained, or Check
U. S. Grade B	B Quality or better	10 to 20, not over 10 3/	C, or Stained, Dirty or Check
U. S. GRADE C	C Quality or better	Not over 20	Dirty or Check

1/ In lots of more than 30 cases no individual case may fall below 70 percent of the specified quality and in lots of 30 cases or less the 80 percent minimum requirement shall apply to each individual case.

2/ Within tolerance permitted, an allowance will be made at receiving points or shipping destination for 1/2 percent leakers in Grades AA, A, and B, and 1 percent in Grade C.

3/ Substitution of higher qualities for the lower qualities specified is permitted.

Supplemental Grade Specifications for Government Purchase Only

Percentage of A Quality	A Quality or better	Maximum number and percentage of eggs allowed as tolerance per 30 dozen		
		B Quality or better	Edible eggs of C Quality, Stained or Checks, or better, in any combination	Loss and inedible
	Minimum Percent			
80% A Quality (Identical with U.S. Consumer Grade A)	80	54 to 72 15 to 20%	18 (5%)	None
60% A Quality	60	108 to 144 30 to 40%	36 (10%)	None
40% A Quality	40	174 to 216 48.3 to 60%	42 (11.7%)	None
20% A Quality	20	246 to 288 68.3 to 80%	42 (11.7%)	None

Tolerance for leakers will be applied only at receiving points or shipping destination.

EXHIBIT NO 22
Witness Herman I. Miller

Loss and Damage to Shell Eggs when Shipped by Rail from Midwestern Shipping Points to Markets in the East, West and South.

United States Department of Agriculture
Washington 25, D. C.

SUMMARY OF SPECIFICATIONS FOR TENTATIVE U. S. WHOLESALE GRADES FOR SHELL EGGS

Grade	AA Quality Minimum Percent	A Quality or better Minimum Percent	B Quality or better Minimum Percent	C Quality or Stained or better Minimum Percent	Tolerance Permitted 1/ Edible Eggs: B Quality, C Quality, Stained, Dirties, or Checks	Edible Eggs: C Quality, Stained, Dirties, or Checks	Edible Eggs: Dirties or Checks	Edible Eggs: Checks	Loss
U.S. Specials ___% AA Quality 2/	20	Balance			7.5%				1.7%
U.S. Extras ___% A Quality 2/		20	Balance			11.7%			2.2% 3/
U.S. Standards ___% B Quality 2/			20	Balance 4/			11.7%		2.8% 3/
U.S. Trades ___% C Quality 2/				85.5			11.7%		5%
U.S. Stained	Eggs with stained shells but otherwise conforming to quality specifications of grades for U.S. Extras and U.S. Standards may be classified as U.S. Stained Extras ___% A Quality or U.S. Stained Standards ___% B Quality, respectively.								
U.S. Dirties								11.7%	5%
U.S. Checks									5%

1/ Substitution of higher qualities for the lower qualities specified is permitted.
2/ The actual percentage must be stated in the grade name.
3/ For the period from August 15 through January 31 the tolerance for loss may be increased to 3.3 percent for U.S. Extras and 4.2 percent for U.S. Standards on refrigerator eggs only.
4/ No more than 40 percent stained eggs permitted in U.S. Standards. If in excess of 40 percent they shall be classified as U.S. Stained Standards .

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(P 1125)

EXHIBIT NO 21
Witness Hamann

Effective: December 1, 1947

UNITED STATES DEPARTMENT OF AGRICULTURE
PRODUCTION AND MARKETING ADMINISTRATION

TENTATIVE U. S. SPECIFICATIONS AND WEIGHT CLASSES FOR CONSUMER GRADES FOR SHELL EGGS

(Based on U.S. Standards for Quality of Individual Shell Eggs)

U. S. CONSUMER GRADE AA - Shall consist of edible eggs of which at least 80 percent[1] are AA Quality, 15 percent[1] may be A Quality, and not over 5 percent[1] may be of the qualities below A, in any combination, but not including Dirties[2].

U. S. CONSUMER GRADE A - Shall consist of edible eggs of which at least 80 percent[1] are A Quality or better, 15 percent[1] may be B Quality, and not over 5 percent[1] may be of the qualities below B, in any combination, but not including Dirties.[2] [3]

U. S. CONSUMER GRADE B - Shall consist of edible eggs of which at least 80 percent[1] are B Quality or better, 10 percent[1] may be C Quality or Stained, in any combination, and not over 10 percent[1] may be Dirties or Checks in any combination.[2] [3]

U. S. CONSUMER GRADE C - Shall consist of edible eggs of which at least 80 percent[1] are C Quality or Stained, in any combination, or better, and the balance may be Dirties or Checks in any combination.[2]

NO GRADE - Eggs of possible edible quality that fail to meet the requirements of an Official or Tentative U.S. Grade or that have been contaminated by smoke, chemicals, or other foreign material that has seriously affected the character, appearance, or flavor of the eggs are classed as "No Grade."

1/ Officially graded eggs shall conform as nearly as possible to the specifications of the respective standards of quality. Tolerances (a total of 20 percent) are permitted within each grade only as an allowance for variable efficiency and interpretation of conscientious graders, normal changes under favorable conditions during reasonable period between grading and inspection, and reasonable variation from inspector's interpretation. Substitution of higher qualities for those specified is permitted.

2/ Within the total tolerance permitted an allowance will be made at receiving points or shipping destination for 1/2 percent leakers in Grades AA, A, and B, and 1 percent in Grade C.

3/ Eggs with stained shells but otherwise conforming to the specifications of Grade A or Grade B, may be classified as Grade A, Stained, or Grade B, Stained, respectively.

Weight Classes for Consumer Grades for Shell Eggs

Size or weight class	Minimum net weight per dozen	Minimum net weight per 30 dozen	Minimum weight for individual eggs at rate per dozen 1/
	Ounces	Pounds	Ounces
Jumbo	30	56	29
Extra Large	27	50½	26
Large	24	45	23
Medium	21	39½	20
Small	18	34	17
Peewee	15	28	-

1/ Minimum weights listed for individual eggs at the rate per dozen are permitted in various size classes only to the extent that they will not reduce the net weight per dozen below the required minimum, consideration being given to variable weight of individual eggs and variable efficiency of graders and scales which should be maintained on a uniform and accurate basis.

These Tentative U.S. Specifications and Weight Classes for Consumer Grades for Shell Eggs supersede, effective December 1, 1947, all U. S. Specifications and Weight Classes for Retail or Consumer Grades for Shell Eggs previously issued.

Approved: September 17, 1947

W R Mansell
Assistant Administrator (Acting)

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Over

Quality of Eggs Loaded in Railroad Cars at Midwestern Shipping Points, 1942-43, and 1948

Grade	Season				Total or Average
	Winter	Spring	Summer	Fall	
	Percent				
A	74.3	75.9	70.1	67.6	72.0
B	22.0	20.0	25.1	28.3	23.9
C	0.9	1.1	1.4	1.7	1.2
Stains & Dirties	1.5	1.6	1.7	1.0	1.4
Checks	1.2	1.4	1.6	1.3	1.4
Loss	0.1	*	0.1	0.1	0.1
Number of Cars	869	583	884	876	3212

* Less than 0.05

Quality of Eggs Unloaded from Railroad Cars at Destination Points, 1942-43, and 1948

Grade	Season				Total or Average
	Winter	Spring	Summer	Fall	
	Percent				
A	55.6	58.5	52.8	47.7	53.2
B	40.2	38.9	42.5	47.3	42.2
C	2.0	2.2	2.5	3.0	2.4
Stains & Dirties	0.7	0.5	0.3	0.3	0.5
Checks	1.3	1.6	1.7	1.5	1.5
Loss	0.2	0.3	0.2	0.2	0.2
Number of Cars	697	389	723	704	2513

Change in Quality of Eggs Shipped by Railroad Cars from Midwestern Shipping Points to Destination Points, 1942-43 and 1948

Grade	Season				Total or Average
	Winter	Spring	Summer	Fall	
	Percent				
A	-18.7	-19.4	-17.3	-19.9	-18.8
B	+18.2	+18.9	+17.4	+19.0	+18.3
C	+ 1.1	+ 1.1	+ 1.1	+ 1.3	+ 1.2
Stains & Dirties	- 0.8	- 1.1	- 1.4	- 0.7	- 0.9
Checks	+ 0.1	+ 0.2	+ 0.1	+ 0.2	+ 0.1
Loss	+ 0.1	+ 0.3	+ 0.1	+ 0.1	+ 0.1

Quality of Eggs Loaded in Railroad Cars at
Midwestern Shipping Points
(Based on Grading and Inspection Records, 1948)

Grade	Season				Total or Average
	Winter	Spring	Summer	Fall	
	Percent				
A	78.0	77.3	65.9	75.7	74.2
B	18.2	18.0	27.2	19.2	20.7
C	0.9	0.9	1.9	1.0	1.2
Stains & Dirties	1.4	1.8	2.5	1.6	1.8
Checks	1.5	1.9	2.3	2.0	1.9
Loss	0.0	0.1	0.2	0.5	0.2
Number of Cars	167	227	189	154	737

Change in Quality of Eggs Shipped in Railroad Cars from Midwestern Shipping Points to Coastal Destination Points, 1948
(Identical eggs graded at both origin and destination)

ORIGIN

Grade	Season				Total or Average
	Winter	Spring	Summer	Fall	
	Percent				
A	81.2	80.1	69.9	73.3	75.0
B	14.8	14.6	23.6	21.7	19.9
C	0.8	0.2	1.9	2.2	1.7
Stains & Dirties	0.9	--	2.5	1.0	1.4
Checks	1.9	4.5	2.0	1.7	1.9
Loss	0.4	0.6	0.1	0.1	0.1
Number of Cars	28	5	14	68	115

DESTINATION

Grade	Season				Total or Average
	Winter	Spring	Summer	Fall	
	Percent				
A	77.7	77.1	67.7	66.1	69.0
B	14.8	14.1	23.0	27.5	23.3
C	1.5	0.1	4.1	2.9	2.6
Stains & Dirties	4.1	--	2.0	1.5	2.1
Checks	1.8	8.0	2.8	2.6	2.7
Loss	0.1	0.7	0.4	0.4	0.3
Number of Cars	28	5	14	68	115

DIFFERENCE

Grade	Season				Total or Average
	Winter	Spring	Summer	Fall	
	Percent				
A	- 3.5	- 3.0	- 2.2	- 8.2	- 6.0
B	0.0	- 0.5	- 0.6	+ 5.8	+ 3.4
C	+ 0.7	- 0.1	+ 2.2	+ 0.7	+ 0.9
Stains & Dirties	+ 3.2	--	- 0.5	+ 0.5	+ 0.7
Checks	- 0.1	+ 3.5	+ 0.8	+ 0.9	+ 0.8
Loss	- 0.3	+ 0.1	+ 0.3	+ 0.3	+ 0.2

[fol. 103a] EXHIBIT 23

Egg Quality Changes During Marketing in the North Central States and Kentucky

Summary

This study of egg quality deterioration in marketing channels and its causes covered more than 1,000 buying and assembly plants throughout the North Central States and Kentucky. The objectives were to learn the quality of eggs at the time of delivery by producers, the decline that took place between the country buying point and the central carlot assembling plant, and the marketing factors that affect quality decline.

One-third of the eggs candled at country stores and buying stations in this study were below A quality on the day of receipt from producers. A further decline of 13.1 points [1] took place between the country buying point and the central plant where eggs are assembled for carlot shipment to markets.

On the basis of these figures therefore, about 42 percent of the eggs marketed in the region studied were below A quality at the time of the grading at the carlot assembly point, which is the second stage in their marketing.

Range of Quality of Eggs

The lots of eggs candled at the country buying station on the day of receipt from producers averaged 65 percent A quality [2] for the marketing in the spring; 64 percent for those in the summer; and 71 percent for those in the fall. [fol. 103b] Wide variations were shown in the quality of eggs delivered by different producers to the same station on the same day and, with the exception of stations operat-

[1] A "point" represents a decline in quality of one egg by one grade in each hundred eggs tested. Twelve points may represent a decline of 12 eggs by one grade each, or of 6 eggs by two grades, or any other similar combination.

[2] In this study, references to "A quality eggs" include both the AA and A grades.

ing on a grade-buying program, prices of the high-quality eggs were the same as those for low-quality eggs.

The average quality of the eggs received on truck routes was about the same as that of eggs received at the stations direct from producers. However, 12.4 percent stained and dirty eggs were received on truck routes as compared with 9.9 percent on deliveries by producers.

On the average, more A quality eggs were found in lots purchased on a grade basis than in those purchased on an ungraded basis for each of the three seasons. The difference in the number of A's was important, particularly in the spring and summer. There were substantially fewer stains and dirties in the lots of eggs purchased on a grade basis.

Of the eggs included in the survey the browns averaged 70 percent A's, the whites 66 percent, the cream-colored 65 percent, and the mixed colored 60 percent. Brown eggs had fewer checks, averaging 3.1 percent as against 4.6 percent for white eggs, and white eggs had a higher rate of stains and dirties. Although these figures indicated differences associated with shell color, they were not important enough to be significant.

The retail stores received a higher average quality of eggs from producers than did other types of the various country buying stations. Relatively small differences were found in the average quality of eggs received by stations, branches, and central assembling plants.

The type of country buying station did not appear to have any relationship to the rate of decline in quality between gradings.

[fol. 103c] There was evidence that eggs held at country buying stations ordinarily decline from the level of quality when received. Eggs on hand averaged 57.1 percent A quality, while those graded upon receipt averaged 66.7 percent.

Rate of Quality Decline

Of the 13.1-point decline in quality between the country buying station and the central assembling plant, 10.2 points were due to interior quality change and 2.9 points to shell damage. The rate of decline ranged from 0 to more than

100 points. The loss over an average period of 2 days was estimated to be 1.5 percent of value of the eggs. On the basis of prices in 1948, this would represent a loss of about $27.00 for each 100 cases of eggs handled. It could be expected that the quality change and economic would be considerably larger during the entire marketing process.

Interior quality deterioration was least when there was a relatively short time between gradings, when the case temperatures were relatively low, and when the egg quality at the first grading was relatively high. The time between gradings appeared to be the most important single factor analyzed.

The type of country buying station did not appear to have any relationship to the rate of decline in quality between gradings.

Only the number of miles traveled between country buying station and central assembling plant was associated with shell damage and that to only a slight degree.

Conclusions drawn from this study appear on page

[fol. 103-D]

Table 2.—Average quality of eggs when delivered by producers, by seasons, 1948

Season	Sample lots	Average percentage of eggs graded as—					
		A quality	B quality	C quality	Stains and dirties	Checks	Leakers and loss
	Number	Percent	Percent	Percent	Percent	Percent	Percent
Spring	1,294	64.6	18.0	1.6	11.0	4.2	0.6
Summer	1,262	63.6	18.3	1.8	11.2	4.3	.8
Fall	956	71.2	13.4	1.2	10.4	3.4	.4
Total or average	3,512	66.7	16.4	1.5	10.8	4.0	0.6

[fol. 103-E]

Table 5.—Quality of eggs when delivered by producers, by season and method of sale, 1948[1]

Season and Method of Sale	Sample lots	Average percentages of purchases graded as— A quality	B quality	C quality	Stains and dirties	Checks	Leakers and Loss
	Number	Percent	Percent	Percent	Percent	Percent	Percent
Spring:							
Graded	707	67.6	20.0	1.3	6.3	4.1	0.7
Ungraded	582	60.7	15.8	1.9	16.7	4.3	0.6
Summer:							
Graded	737	69.4	18.2	1.5	6.2	4.1	0.6
Ungraded	517	54.9	18.4	2.2	18.6	4.6	1.3
Fall:							
Graded	681	72.6	14.1	1.3	8.1	3.4	0.5
Ungraded	247	66.8	11.0	1.0	17.0	3.7	0.5
Total graded	2,125	69.9	17.4	1.4	6.9	3.8	0.6
Total ungraded	1,346	60.8	15.1	1.7	17.4	4.2	0.8

[1] The kind of eggs purchased was not ascertained for 41 producer lots which were not included in this table.

[fol. 103-F]

Table 10.—Change in number of A quality eggs and checks between station and plant, 1948[1]

	Lots	A quality eggs at station	A quality eggs at plant	Decrease in number of A quality eggs	Checks at station	Checks at plant	Increase in number of checks
		Percent	Percent	No. eggs	Percent	Percent	No. eggs
Lake States							
Spring	503	71.6	62.8	8.8	4.9	5.7	0.8
Summer	394	72.9	64.3	8.6	5.4	6.4	1.0
Fall	237	79.0	73.9	5.1	4.5	5.2	0.7
Corn Belt							
Spring	364	76.5	65.0	11.5	3.3	3.9	0.6
Summer	308	68.5	59.2	9.3	3.7	4.7	1.0
Fall	209	82.6	77.4	5.2	2.6	3.0	0.4
Plains States							
Spring	116	61.7	52.0	9.7	4.9	5.7	0.8
Summer	180	59.9	46.8	13.1	5.0	6.0	1.0
Fall	56	74.8	69.0	5.8	3.6	4.6	1.0
Total-Average							
Spring	983	72.2	62.3	9.9	4.3	5.0	0.7
Summer	882	68.7	58.9	9.8	4.7	5.7	1.0
Fall	502	80.0	74.8	5.2	3.6	4.2	0.6

[1] A quality also includes eggs of A interior quality but with stained or dirty shells.

[fol. 103-G]

Table 14.—Effects of distance between gradings on the point values of interior quality change and shell damage of egg receipts of country buying stations and central assembling plants, by quality changes and seasons, 1948[1]

Quality change and season	Distance between country buying stations and central assembling plant					
	0 to 29 miles		30 to 59 miles		60 or more miles	
	Egg lots	Quality change	Egg lots	Quality change	Egg lots	Quality change
	Number	Points	Number	Points	Number	Points
Average interior quality:						
Spring	949	9.7	527	11.4	234	10.4
Summer	639	11.9	711	13.3	533	11.6
Fall	367	5.6	366	6.3	422	6.9
Average shell damage:						
Spring	949	2.5	527	2.8	234	2.8
Summer	639	3.4	711	3.5	533	4.0
Fall	367	2.7	366	2.5	422	2.2

[1] The mileage between gradings was not reported for 10 producer lots in the spring. These were omitted from this table.

[fol. 103h] *Factors Associated with Shell Damage*

The egg quality decline that resulted from the change in the shell condition was examined in its possible relationship to the following factors: Time between grading, distance from country buying station to central assembling plant, type of assembler, and condition of container.

The time between grading, as indicated in table 12, did not have a consistent effect on the rate of shell damage.

In analyzing the relationship of distance in three ranges of mileage between country buying station and central assembling plant, the shell damage was slightly greater, averaging 3.1 points, where the distance was 60 miles or more between gradings. Shell damage averaged about 2.9 points when the distance was less than 60 miles.

In comparing shell damage with respect to different types of country buying stations, the stores had the greatest damage, averaging 3.0 points, as compared with the stations and buying branches, which had 2.7 and 2.8 points, respectively.

The containers were rated by the graders with respect to three parts: The case, the flats, and the fillers. It was assumed that if one of the three sections of the container

were inferior to the others, the effect would be the same as if all parts of the container were inferior. Table 17 indicates that no consistent relationship existed between the condition of the container and shell damage.

[fol. 103-I]

EXHIBIT No. 24

Witness: Roberts

Before the
Interstate Commerce Commission

Special Egg Docket 30030

Midwest Dairy Despatch, Inc.

Comparison of Claims for Certain Months in 1947, 1948, and 1949.

All shipments are straight cars of eggs, or cars with eggs and butter therein destined to New York City. All shipments are transported by truck to Minneapolis, Minnestoa, re-handled, shipped via rail or truck to New York. There have been no rail shipments since July 24, 1948

Via Rail

1947

In January, February, the first 15 days of March, August, and the first 15 days in September, 126 cars where shipped, and there were claims filed against 107 cars as follows:

Month	No. Cars with Claims.	Average Claim per car
January, 1947	28	$210.87
February, 1947	27	222.02
March 15, 1947	13	123.65
August, 1947	25	334.34
September 15, 1947	14	294.62

1948

In January, February and the first 15 days of March, 95 cars were shipped and claims against 55 as follows:

January, 1948	22	130.98
February, 1948	22	73.81
March 15, 1948	11	42.86

Via Truck

Month	No. Trucks with Claims	No. of Cases	Average Claim per truck
August, 1948	18		8.65
September 15, 1948	3		11.91
October, 1948	13	5,396	
November, 1948	23	9,622	1.32
December, 1948	35	17,766	
January, 1949	39	19,147	

or .0028 per case

[fol. 103-J]

ICC Docket No. 30030

EXHIBIT No. 25

Witness: W. F. Streving

Summary Statement of Shell Eggs

Received at New York N. Y. Quartermaster Market Center on Government Bills of Lading During Three Years Period 1944 to 1946 Inclusive, From Various Points of Origin Showing: Totals Received, Reported and Substantiated Damage or Loss, Annual Average Price Per Dozen and Per Case of Eggs, Average value of Loss Incl. Reconditioning, also Percentages to Totals and Other Detail as Indicated

Year	Damaged Cars Received at NYQMMC	Cases Contained in Cars	Cases Reported as Damaged on Government B/L		Cases Lost or Rejected on Basis of Settlement With Carrier		Average Annual Basis Price		Annual Loss Dollars and Cents
			Cases	%	Cases	%	Dozen	Case	
1944	91	53680	15458	28.8	2550	4.7	.4543	$13.63	$47,533.97
1945	145	86841	40372	46.5	4668	5.4	.4945	14.84	94,404.49
1946	68	40680	21306	52.4	2265	5.6	.4519	13.56	48,822.05
Totals Three Years Period	304	181201	77136	42.6	9483	5.233%	.4669	14.01	190,760.51

Recapitulation of Three (3) Year Period

					Percentage to Totals		Average Value to Total Excluding Transp. Charge
1. Totals Shipped into NYQMMC During 3 Year Period	2519	Cars	=	1,511,400	Cases	100	$21,174,714.00
2. Received Damaged as Reported on Government Bills of Lading	304	Cars	=	181,201	Cases	11.990	2,538,636.46
3. Cases Lost or Rejected on Basis of Settlement with Carrier	181201 Cases (304) Cars		=	9,483	Cases	5.233	131,706.72* 59,053.79** Total 190,760.51
4. Actual Loss in Percentages to Total Cases Received	1511400 Cases shipped (2519) Cars			9,483	Cases	.627	

* Average value of commodity based on annual average price.
** Average cost of reconditioning.

[fol. 103K]

ICC Docket No. 30030

Exhibit No. —

Witness: W. F. Streving

Statement of Shell Eggs

Received in Damaged Condition During the Year 1944
At New York Quartermaster Market Center, New York With Details As Indicated

Damaged Car Shipped		Number of Cars Received Damaged		Cases Reported Damaged		Cases Lost or Rejected (Settlement Basis)		Average Price		Loss and Damage Value
Year	Month	Cars	Cases	Cases	%	Cases	%	Dozen (¢)	Case ($)	
1944	Jan.	1	600	399	66.5	37	6.1	38.08	11.42	$ 671.70
1944	Mar.	2	1,200	314	38.2	22	1.8	37.42	11.23	506.43
1944	Apr.	3	1,800	633	35.1	52	2.9	39.56	11.87	941.95
1944	May	1	600	25	4.1	25	4.1	43.06	12.92	324.52
1944	June	19	11,400	3,284	28.8	654	5.7	39.72	11.92	11,341.75
1944	July	21	12,600	5,589	44.4	624	4.9	46.23	13.87	11,456.87
1944	Aug.	6	3,600	1,857	51.6	189	5.3	43.51	13.05	3,232.62
1944	Sept.	7	4,200	544	12.9	214	5.1	48.46	14.54	3,502.35
1944	Oct.	13	7,360	922	12.5	408	5.5	50.92	15.27	7,644.74
1944	Nov.	5	2,760	477	17.3	51	1.8	57.02	17.11	1,878.40
1944	Dec.	13	7,560	1,414	18.7	274	3.6	55.81	16.74	6,032.64
Totals 1944.....		91	53,680	15,458	28.8%	2,550	4.7%	45.43	13.63	$47,533.97

[fol. 103L]

ICC Docket No. 30030

Exhibit No. —

Witness: W. F. Streving

Statement of Shell Eggs

Received in Damaged Condition During the Year 1945
At New York Quartermaster Market Center, New York With Details As Indicated

Damaged Car Shipped		Cars Received Damaged		Cases Reported Damaged		Cases Lost or Rejected (Settlement Basis)		Average Price		Loss and Damage Value
Year	Month	Cars	Cases	Cases	%	Cases	%	Dozen (¢)	Case ($)	
1945	Jan.	17	10,200	2,830	27.7	254	2.5	48.39	14.52	$ 5,783.35
1945	Feb.	9	5,400	2,040	37.8	162	3	42.85	12.86	3,152.07
1945	Mar.	17	10,200	5,001	49	389	3.8	42.51	12.75	6,828.37
1945	Apr.	5	3,000	1,317	43.9	149	4.9	42.31	12.69	2,543.25
1945	May	15	9,000	4,115	45.7	394	4.4	43.05	12.92	7,359.99
1945	June	19	11,400	5,590	49	592	5.2	45.56	13.66	11,172.63
1945	July	15	9,000	4,968	55.2	637	7.1	41.08	12.32	13,332.60
1945	Aug.	13	7,800	3,892	49.9	536	6.9	54.11	16.23	11,242.48
1945	Sep.	6	3,556	2,029	57.1	728	20.4	58.89	17.67	13,308.63
1945	Oct.	3	1,800	794	44.1	96	5.3	56.12	16.84	2,200.61
1945	Nov.	14	8,365	4,590	54.9	476	5.7	60.22	18.07	10,990.98
1945	Dec.	12	7,120	3,206	45	255	3.6	58.37	17.51	6,489.53
Totals 1945		145	86,841	40,372	46.5	4,668	5.4	49.45	14.84	$94,404.49

[fol. 103M]

ICC Docket No. 30030

Exhibit No. —

Witness: W. F. Streving

Statement of Shell Eggs

Received in Damaged Condition During the Year 1946
At New York Quartermaster Market Center, New York With Details As Indicated

Damaged Car Shipped		Cars Received Damaged		Cases Reported Damaged		Cases Lost or Rejected (Settlement Basis)		Average Price		Loss and Damage Value
Year	Month	Cars	Cases	Cases	%	Cases	%	Dozen (¢)	Case ($)	
1946	Jan.	8	4,680	2,047	43.7	177	3.8	49.43	14.83	$ 4,078.22
1946	Feb.	13	7,800	4,093	52.5	280	3.6	38.91	11.67	5,590.03
1946	Mar.	4	2,400	1,237	51.5	87	3.6	39.07	11.72	1,656.95
1946	May	1	600	11	1.8	11	1.8	38.91	11.67	134.97
1946	June	2	1,200	298	24.8	23	1.9	43.09	12.93	467.34
1946	July	4	2,400	1,171	48.8	113	4.7	43.09	13.51	2,141.10
1946	Aug.	2	1,200	680	56.7	67	5.6	44.40	13.32	1,367.10
1946	Sep.	3	1,800	675	37.5	102	5.7	49.56	14.87	1,978.37
1946	Oct.	24	14,400	8,778	60.9	1,172	8.1	50.58	15.17	26,518.00
1946	Nov.	3	1,800	1,082	60.1	135	7.5	47.53	14.26	2,689.62
1946	Dec.	4	2,400	1,234	51.4	98	4.1	52.50	15.75	2,200.35
Total 1946		68	40,680	21,306	52.4%	2,265	5.6	45.19	13.56	$48,822.05

(Here follows 1-photo, folio 103N)

1140A

ICC Docket No. 30030
Exhibit No.
Witness: W. F. Strowig

STATEMENT OF ACTUAL CLAIMS ON SHIPMENTS HANDLED BY RAIL CARRIERS

COMMODITY: SHELL NUTS, FOR THE YEARS 1944 TO 1946 INCLUSIVE, DESTINED TO
NEW YORK QUARTERMASTER MARKET CENTER, NEW YORK, N. Y., FROM VARIOUS POINT OF ORIGINS
SHOWING MONTH AND YEAR LOSS OR DAMAGE ACTUALLY OCCURRED AND MONTH AND YEAR SETTLEMENT WAS MADE

| SHIPMENTS DAMAGED DURING YEAR AND MONTH | NUMBER OF DAMAGED SHIPMENTS | DISTRIBUTION OF SETTLEMENT BY MONTHS AND PERCENTAGE SETTLED EACH YEAR | | |

[fol. 103-O]

EXHIBIT No. 26

ICC Docket No. 30030

Witness: W. F. Streving

Statement of Shell Eggs

Received at Richmond, Virginia Quartermaster Market Center on Government Bills of Lading and Commercial Freight Bills During the Years 1945 to 1948 Inclusive, from Various Points of Origin, Showing: Totals Received, Reported and Substantiated Damage or Loss, Annual Average Price per Dozen and per Case of Eggs, Average Value of Loss Including Reconditioning, Also Percentages to Total and Other Detail

Received Total Number of Shipments		Damaged Cars Received			Cases Reported as Damaged on Gov't B/L or Com'l F/B		Cases Lost or Rejected on Basis of Settlement with Carrier		Average Price on Traffic Involved		Loss and Damage Value
Year	No. of Cars	Month	No. of Cars	Cases	Cases	%	Cases	%	Dozen(¢)	Cases($)	
1945	189	April	1	660	22	3.334	22	3.334	42.31	12.69	$268.42
		April	1	540	18	3.334	18	3.334	42.31	12.69	220.70
Totals for Year			2	1200	40	3.334	40	3.334	42.31	12.69	489.12
1946	39	None									
1947	42	May	1	600	79	13.167	2	.334	50.27	15.08	29.90
		July	1	600	78	13.	6	1.	55.95	16.78	325.00
		July	1	600	1	.167	1	.167	55.95	16.78	14.53
		October	1	600	2	.334	2	.334	65.92	19.77	38.64
Totals for Year			4	2400	160	6.667	11	.459	57.02	17.10	408.07
1948	51	March	1	600	3	.5	3	.5	51.76	15.53	46.59
		March	1	600	6	1.	6	1.	51.76	15.53	91.71
		July	1	600	1	.167	1	.167	54.82	16.45	18.75
		August	1	600	87	14.5	2	.334	59.51	17.85	31.87
Totals for Year	321		4	2400	97	4.042	12	.5	54.46	16.34	188.92

Recapitulation of Four Year Period

1945	189 (113400 Cases)	2	1200	40	3.334	40	3.334	42.31	12.69	$489.12
1946	39 (23400 Cases)									
1947	42 (25200 Cases)	4	2400	160	6.667	11	.459	57.02	17.10	408.07
1948	51 (30600 Cases)	4	2400	97	4.042	12	.5	54.46	16.34	188.92
	321 (192060 Cases)	10	6000	297	4.95	63	1.05	51.26	15.38	$1,086.11

				Percentage To Totals	Average Value To Total Excluding Transp. Charges
1. Totals Shipped into Richmond QMMC During 4 Year Period	321 Cars	192600	Cases	100 %	$2,962,188.00
2. Received Damaged as reported —	10 Cars 6000 Cases	297	Cases	4.95%	4,567.86
3. Cases Lost or Rejected on Basis of Steelment with Carriers	6000 Cases 10 Cars	63	Cases	1.05%	968.94* 117.17**
					1,086.11
4. Substantiated Loss in Percentages to Total Cases Received	192600 Cases 321 Cars	63	Cases	.0327	

*Average Cost of Commodity Based on Average Price.
**Average Cost of Reconditioning.

[fol. 103-P]

ICC Docket No. 30030

EXHIBIT No. —

Witness: W. F. Streving

Comparative Study of Shell Eggs Received Inbound

Motor Carrier Shipments: From Various Origin, Noted and Substantiated Damage and Loss in Percentage Relation for the Period as Indicated
Richmond QM Market Center, Richmond, Virginia

Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Shipments T.L.*	Total Shipments Cases	Loss or Damage Noted—Cases	Actual Loss or Damage No. Cases	Value of Eggs Average Price Annual Basis Per Case	Value of Eggs Average Price Annual Basis	Average Percentage of Damage or Loss to Totals Per Month	Per Year	Four Year Period
1945.....	1	3	3	13	8	4	7	2	7	1	...	9	58	23,200	....	....	.....	$14.84	$ 344,288.00	.....	.....	.....
1946.....	13	2	...	...	10	21	47	28	64	83	68	55	391	156,400	....	....	.....	13.65	2,134,860.00	.....	.....	.....
1947.....	42	34	46	61	47	29	43	28	37	86	43	91	587	234,800	....	....	.....	16.53	3,881,244.00	.....	.....	.....
1948.....	58	52	40	56	63	70	91	51	67	100	65	68	781	312,400	....	....	.....	17.18	5,367,032.00	.....	.....	.....
Totals....	114	91	89	130	128	124	188	109	175	270	176	223	1,817	726,800	....	....	.....	**$15.55	$11,301,740.00	.....	.....	.....

* Average Shipment Approximately 400 cases.
** Average price and value four (4) year period.

[fol. 103Q]

ICC Docket No. 30030

EXHIBIT No. —

Witness: W. F. Streving

Comparative Statement of Shell Egg Movements

Received at Richmond QM Market Center 1945 to 1948 inclusive
On Month by Month Basis and Totals as shown
Indicating Trend of Traffic

	Rail Movements													Motor Carrier Movements										
Year	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Shipments	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Shipments
1945	22	16	31	35	38	9	3	8	22	2	2	1	189	1	3	3	13	8	4	7	2	7	1	..	9	58
1946	2	..	1	..	5	5	7	4	3	6	3	3	39	13	2	..	..	10	21	47	28	64	83	68	55	391
1947	7	3	..	1	2	5	8	3	2	6	2	3	42	42	34	46	61	47	29	43	28	37	86	43	91	587
1948	6	11	7	8	5	2	3	4	3	...	1	1	51	58	52	40	56	63	70	91	51	67	100	65	68	781
Four year totals	37	30	39	44	50	21	21	19	30	14	8	8	321	114	91	89	130	128	124	188	109	175	270	176	223	1817

Summary Comparison Rail Vers. Truck Movements
By Years and Totals as Indicated

Year	Rail	Truck	Total Rail and Truck	Percentage of Movement Rail	Truck
1945	189	58	247	76.5	23.5
1946	39	391	430	9.1	90.9
1947	42	587	629	6.7	93.3
1948	51	781	832	6.1	93.9
Four year Period	321	1817	2138	15.	85.

| | | |

[fol. 104]

EXHIBIT No. 27

Witness: Murphy

Docket No. 30030

Special Regulations—Eggs

* * * *

Comparison of Shell Egg Rail Shipments Delivered and Loss & Damage Claims at New York, N. Y. During First 10 Months of 1948–1949

	(A)	(B)	(C)	
1948	No. Cases	No. Cars	Loss & Damage Claims No.	Amount
January	444,489	741	508	$140,269.83
February	336,425	562	436	114,734.09
March	413,428	689	530	94,335.58
April	406,125	677	333	64,356.73
May	388,900	648	333	62,228.26
June	388,807	648	413	80,948.50
July	271,993	453	376	83,000.39
August	181,641	303	164	62,604.66
September	213,312	355	429	97,212.14
October	158,907	265	286	71,751.33
Totals	3,204,027	5,341	3,808	$871,441.51

	(A)	(D)	(C)	
1949				
January	208,515	463	192	$ 42,963.92
February	135,208	300	239	62,599.69
March	122,885	273	238	49,582.63
April	133,971	298	253	40,839.58
May	183,283	407	183	35,533.28
June	136,080	302	193	42,274.17
July	116,650	259	116	28,965.66
August	119,557	265	133	37,617.13
September	64,907	144	280	81,891.53
October	52,866	117	245	69,275.02
Totals	1,273,922	2,828	2,072	$491,542.61

	1948	1949
Average amount claim per car handled	$163.16	$173.81
Average amount per claim	228.84	237.23

Source:

(A) Mimeographed reports of U. S. Dept. of Agriculture; P&M Admin., Dairy & Poultry Market News Service, 641 Washington St., New York, N. Y.
(B) Computed on basis of 600 cases per car.
(C) Freight claim statistics of Railroad Perishable Inspection Agency, New York, N. Y.
(D) Computed on basis of 450 cases per car.

[fol. 105] I.C.C. Docket No. 30030

Exhibit No. 28

Witness: E. A. Hodkinson
12-15-49—J. F.

Special Regulations Governing Descriptions, Inspection and Delivery of Eggs, and the Handling of Claims Thereunder

Section 1. Shippers of eggs must place the following information on shipping order and bill of lading:

(a) Total number of packages.

(b) Type of package (wooden or fibreboard) and number of each type and capacity.

(c) Number of packages that do not contain full number of eggs for which the package is intended, and the actual extent of such shortage.

(d) Number of packages entirely containing checked, cracked, stained or dirty eggs.

Section 2: Upon arrival of shipment at point of delivery, the consignee or his authorized representative shall have the privilege of opening each package, at no expense to the carrier (see Section 8), and of initially examining the contents thereof; provided, however, on notice by the carrier, such initial examination shall be in the presence of the carrier's representative. If any package contains eggs having shell damage for which the carriers may be deemed responsible, the contents of such package shall be jointly inspected by the consignee and the carrier, or their authorized representatives. Any damage to the eggs shall be jointly recorded by the consignee and the carrier, or their authorized representatives, and such joint record shall be conclusive as to the nature and extent of damage.

[fol. 106] Section 3. The examination by consignee and joint inspection by consignee and carrier, provided for in Section 2 of this Note, shall be made before the shipment is removed from carrier's possession, except where the carrier agrees that the joint examination, or both the examination and joint inspection, may be made elsewhere and within a specified period of time after actual delivery of the shipment by the

carrier into possession of consignee or his designated agent. The carrier shall have the right to place identifying marks upon any package to be inspected.

Section 4. Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint inspection of the entire contents of the shipment to determine the damage from such causes.

Section 5. On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6. On eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 4 per cent of the contents of the packages containing damaged eggs. Where damage exceeds 4 per cent, claims shall be allowed for all damage in excess of 4 per cent, if investigation develops carrier liability.

[fol. 107] *Exception.* Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 3 per cent, the percentage of actual damage as shown on such certificates, plus 1 per cent shall be used in lieu of 4 per cent specified in this Section.

Section 7. On eggs placed in packages at points other than the rail point of origin no claim shall be allowed where the physical damage to the eggs at destination does not exceed 6 per cent of the contents of the packages containing damaged eggs. Where damage exceeds 6 per cent claims shall be allowed in excess of 6 per cent, if investigation develops carrier liability.

Exception: Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 5 per cent the percentage of actual damage as shown on such

certificates, plus 1 per cent, shall be used in lieu of 6 per cent specified in this Section.

Section 8. No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier liability, actual and necessary charges incurred for labor and material, as verified by carrier representative, in reconditioning each package in which verified damage ex- [fol. 108] ceeds the percentages stated or otherwise provided for in Section 6 or Section 7 of this Note, whichever is applicable, shall be borne by the carrier. If, by reconditioning any damaged package or contents, there shall result an enhanced value because of such reconditioning of such package or contents, such increased value shall be credited to the claim.

Section 9. Where the application of percentages stated or otherwise provided for in Section 6 or Section 7 of this Note result in fractions of one egg, such fractions shall be increased to the next whole number.

[fol. 109]

EXHIBIT No. 32

Witness: Winters

Zenith Godley Co., Inc.
176 Duane Street
New York 13, N. Y.

Actual claims made to railroad by above-consignee on cars of eggs received and determined to be in bad order condition by RPIA.

Date	Car No.	No. Cases in Car	Railroad	Dozen Loss	Dozen Leakers	Dozen Checks	Dozen Stained
7/19/49	NWX 3136	384	Erie	111	34	43	82
8/1/49	NWX 2779	384	B & O	120	50	53	107
8/9/49	NWX 2316	371	Erie	123	33	52	134
10/24/49	NWX 3080	400	B & O	139	64	96	151
11/14/49	NWX 70609	400	B & O	127	63	81	149

[fol. 110]

EXHIBIT No. 33

Witness: Winters
12/15/49 J. F.

Zenith Godley Co., Inc.
176 Duane Street
New York 13, New York

Exceptions to sound eggs found in reconditioned cases of eggs after rail damage was removed under supervision of carrier's representatives.

Date of Inspection	USDA Grading Cert. No.	Car No.	Pier Location and Railroad	No. Cases Examined	No. Cases in Lot	% U. S. Stained	% U. S. Checks	% Loss
7/19/49	E297134	NWX3136	Pier 20 NR. Erie	7	100	.7	2.3	...
8/2/49	E297397	NWX2779	Pier 22 NR. B & O	10	200	1.7	2.5	.7[1]
8/10/49	E281146	NWX2316	Pier 20 NR. Erie	7	100	...	3.9	.4[1]
10/26/49	E282448	3080	Pier 22 NR. B & O	10	150	1.2	1.1	1.0[1]
11/16/49	E284816	NWX70609	Pier 22 NR. B & O	5	50	5.0	1.2	.4
			Average of 5 cars inspected			1.72	2.2	

[1] Inedible.

CONSOLIDATED FREIGHT CLASSIFICATION'S NOTE 5 CONTAINING "SPECIAL REGULATIONS GOVERNING DESCRIPTIONS, MARKS, INSPECTION AND DELIVERY OF EGGS AND THE HANDLING OF CLAIMS THEREUNDER" PRIOR TO AND EFFECTIVE SINCE JULY 24, 1948

Consolidated Freight Classification No. 18
A. H. Greenly's I.C.C. - C.C. No. 62
Effective July 1, 1948 1/

Column 1

Line	Item	Articles	Less Carload Ratings	Carload Minimum (Pounds)	Carload Ratings
1		DAIRY PRODUCTS:			
2	14555	Eggs, noibn, see Notes 5 and 6, items 14560 to 14590:			
3		In packages complying with specifications for package 512 or 893,			
4		see Notes 7, 8, 9 and 10, inclusive, items 14595, 14600, 14601			
5		and 14602.	2	20,000	65-60-3
6		In packages not complying with specifications for package 512 or			
7		893, or not complying with requirements of Notes 7 and 8, items			
8		14595 and 14600, see Note 10, item 14602	1	20,000	2
9	14560	Note 5.—Special regulations governing descriptions, marks, in-			
10		spection and delivery of eggs, and the handling of claims			
11		thereunder.			
12	14565	Section 1.—Shippers of eggs shall be required to note on ship-			
13		ping order and bill of lading: (a) The character of the			
14		shipment, whether current receipts, rehandled current receipts,			
15		rehandled and repacked eggs, see paragraph (d), storage packed			
16		eggs, checks or dirties, and the number of cases of each.			
17		(b) The particular identification mark appearing on cases			
18		containing different grades as for example:			
19		400 cases storage packed (N/M), no mark			
20		40 cases dirty eggs, marked "D"			
21		10 cases checked or cracked eggs, marked "C"			
22		If no marks, billing must so read.			
23		(c) Number of cases separately that are not packed with full			
24		thirty dozen and extent of shortage.			
25		(d) Rehandled and repacked eggs consist of eggs rehandled and			
26		repacked in new standard cases with new flats, fillers and			
27		cushions, in accordance with classification requirements,			
28		except as provided in Note 10, item 14602.			

Supplement 2 2/ to
Consolidated Freight Classification No. 18
A. H. Greenly's I.C.C. - C.C. No. 62
Effective July 24, 1948

Column 2

Line	Item	Articles	Less Carload Ratings	Carload Minimum (Pounds)	Carload Ratings
1		DAIRY PRODUCTS:			
2	14555-A	Eggs, noibn, see Notes 5, items 14560-A to 14587-A, and 6, item			
3		14590:			
4		In packages complying with specifications for package 512 or 893,			
5		see Notes 7, 8, 9, and 10, items 14595, 14600, 14601 and 14602 .	2	20,000	65-60-3
6		In packages not complying with specifications for package 512 or			
7		893, or not complying with requirements of Notes 8 and 9, items			
8		14600 and 14601, see Note 10, item 14602	1	20,000	2
9	14560-A	Note 5.—Special regulations governing descriptions, marks, in-			
10		spection and delivery of eggs, and the handling of claims			
11		thereunder.			
12	14565-A	Section 1.—Shippers of eggs shall be required to note on ship-			
13		ping order and bill of lading: (1) The character of the			
14		shipment, whether current receipts or graded, rehandled and			
15		repacked eggs, storage packed eggs, see paragraphs (a), (b),			
16		and (c), checks or dirties and the number of cases of each.			
17		(2) The particular identification mark appearing on cases			
18		containing different grade, as for example:			
19		400 cases storage packed (N/M), no mark			
20		40 cases dirty eggs, marked "D"			
21		10 cases checked or cracked eggs, marked "C"			
22		If no marks, billing must so read.			
23		(3) Number of cases separately that are not packed with full			
24		thirty dozen and extent of shortage.			
25		(a) The term "rehandled and repacked" shall apply ONLY to			
26		eggs that have been rehandled and repacked AT POINT OF			
27		ORIGIN OF THE RAIL SHIPMENT in new standard cases with new			
28		flats, fillers, and cushions, in accordance with Classifica-			
29		tion requirements, except as provided in Note 10, item 14602.			
30		BROKEN, CRACKED, CHECKED EGGS AND EGGS STAINED FROM BROKEN			
31		EGGS SHALL BE REMOVED IN SUCH REHANDLING AND REPACKING. Eggs			
32		that have been shipped by rail as "rehandled and repacked"			
33		eggs under the provisions of this paragraph and delivered by			
34		rail to a storage warehouse will, if reshipped by rail from			
35		the storage warehouse, be considered as "rehandled and re-			
36		packed" eggs.			
37		(b) The term "storage packed eggs" shall apply ONLY to eggs			
38		that have been GRADED AND SORTED AT PACKING PLANTS OR STORAGE			
39		WAREHOUSES LOCATED AT POINT OF ORIGIN OF THE RAIL SHIPMENT			
40		AFTER THE REMOVAL OF BROKEN, CRACKED, CHECKED EGGS AND EGGS			
41		STAINED FROM BROKEN EGGS. The graded and sorted eggs shall be			
42		packed in new standard cases with new flats, fillers and			
43		cushions, in accordance with Classification requirements,			
44		except as provided in Note 10, item 14602. Eggs that have			
45		been shipped by rail as "storage packed eggs" under the pro-			
46		visions of this paragraph and delivered by rail to a storage			
47		warehouse will, if reshipped by rail from the storage ware-			
48		house, be considered as "storage packed eggs."			
49		(c) The terms "current receipts" or "GRADED" SHALL APPLY TO			
50		EGGS NOT COMPLYING WITH THE PROVISIONS OF PARAGRAPHS (a) AND			
51		(b). (The terms "current receipts" or "graded" when used on			
52		a shipping order and bill of lading do not necessarily denote			
53		the commercial grade of the eggs.)			

1/ Effective July 15, 1919, and as amended October 25, 1919, February 10, 1941, December 7, 1945 (Witness L. W. North, Exhibit 10).
2/ Reproduced in Supplement No. 7 as contained in Supplement No. 2.
Underscoring supplied to indicate changes from Column 1 to Column 2. Broken lines in Column 1 denote deletions in whole or in part. Solid lines in Column 2 denote additions in whole or part.
The words capitalized in Column 2 place emphasis on wording which changes effect of prior regulations shown in Column 1.

[fol. 111]

EXHIBIT No. 34

Witness: Winters
12/15/49 J. F.

New York Mercantile Exchange
6 Harrison Street
New York 13, N. Y.

Exceptions to sound eggs found in reconditioned cases of eggs after rail damage was removed under supervision of carrier's representatives.

Date of Inspection	U. S. D. A. Grading Cert. No.	Car No.	Pier Location and Railroad	No. Cases Examined	% U. S. Stained	% U. S. Checks	Percent Loss	No. Cases in Lot
9/22/49	E281823	58267	Pier 20 NR. Erie	4	.8	2.5	...	24
9/22/49	E281862	3341	Pier 20 NR. Erie	5	1.0	1.6	2	50
9/22/49	E281863	8146	Pier 20 NR. Erie	5	.4	1.6	...	34
9/22/49	E281864	5025	Pier 20 NR. Erie	7	.4	2.4	3	100
9/27/49	E281887	81259	Pier 22 NR. B & O	7	.7	6.4	6[1]	100
			Average 5 lots inspected		.66	2.90		

[1] Inedible.

Line	Item	Column 1 Articles	Less Carload Ratings	Carload Minimum (Pounds)	Carload Ratings	Column 2 Articles	Less Carload Ratings	Carload Minimum (Pounds)	Carload Ratings
1		DAIRY PRODUCTS:				DAIRY PRODUCTS:			
2	11570	Section 2.—Upon arrival at destinations of shipments of eggs in				11570-A Section 2.—(a) Upon arrival at destinations of shipments of			
3		CL or LCL lots, consignee or his authorized representative shall				"REHANDLED AND REPACKED" EGGS OR "STORAGE PACKED" eggs in CL or			
4		have the privilege, before eggs leave the possession of carrier				LCL lots, consignee or his authorized representative shall have			
5		and under supervision of carrier's representative, of lifting				the privilege, before eggs leave the possession of carrier and			
6		the lids of twenty (20) cases in any carload, or of twenty-five				under the supervision of carrier's representative, of lifting			
7		percent (25%), with a maximum of twenty (20) cases, of the cases				the lids of twenty (20) cases in any carload or of twenty-five			
8		of any LCL lot chosen by him, and of examining the top layer				percent (25%) with a maximum of twenty (20) cases, of the cases			
9		thereof for the purpose of ascertaining whether such cases				of any LCL lot chosen by him, and of examining the top layer			
10		contain damaged eggs.				thereof for the purpose of ascertaining whether such cases con-			
11		If such examination shows no evidence of 3/ damage, it shall be				tain damaged eggs. A case showing external evidence of damaged			
12		considered complete and final for the entire shipment, and a				eggs within that case not disclosed by top layer inspection may			
13		good order receipt shall be required of consignee.				be segregated for the purpose of ascertaining the actual damage			
14		If such examination, however, discloses damage, consignee shall				in that case.			
15		have the right to make further examination of shipment and to				If such examination shows no evidence of damage it shall be			
16		set aside all cases containing damaged eggs. Joint inspection of				considered complete and final for the entire shipment, and a			
17		all such cases set aside shall be conducted by representative of				good order receipt shall be required of consignee.			
18		carrier and consignee, or his representative, and extent of				If such examination, however, discloses damage, consignee shall			
19		damage, together with facts pertaining thereto, shall be noted				have the right to make further examination of shipment and to			
20		on paid freight receipt or other document and signed by joint				set aside all cases containing damaged eggs. Joint inspection			
21		inspectors.				of all such cases set aside shall be conducted by representative			
22						of carrier and consignee, or his representative, and extent of			
23						damage, together with facts pertaining thereto, shall be noted			
24						on paid freight receipt or other document and signed by joint			
25						inspectors.			
26						(b) Upon arrival at destinations of shipments of "CURRENT			
27						RECEIPTS" OR "GRADED" eggs in CL or LCL lots, consignee or his			
28						authorized representative shall have the privilege before eggs			
29						leave the possession of carrier and under supervision of carri-			
30						er's representative, of lifting the lids of twenty (20) cases in			
31						any carload or of twenty-five percent (25%) with a maximum of			
32						twenty (20) cases, of the cases of any LCL lot chosen by him, and			
33						of examining the top layer thereof for the purpose of ascertain-			
34						ing whether such cases contain damaged eggs. A case showing external			
35						evidence of damaged eggs within that case not disclosed by top			
36						layer inspection may be segregated for the purpose of ascertaining			
37						the actual damage in that case.			
38						If such examination shows FIVE PERCENT (5%) OR LESS damage, it			
39						shall be considered complete and final for the entire shipment,			
40						and a good order receipt shall be required of consignee. If such			
41						examination, however, discloses MORE THAN FIVE PERCENT (5%) damage,			
42						consignee shall have the right to make further examination of			
43						shipment and to set aside all cases containing MORE THAN FIVE PER-			
44						CENT (5%) damage. Joint inspection of all such cases set aside			
45						shall be conducted by representative of carrier and consignee, or			
46						his representative, and extent of damage, together with facts			
47						pertaining thereto, shall be noted on paid freight receipt or			
48						other document and signed by joint inspectors.			

3/ Not deleted in Section 2 paragraph (a) under Column 2 but is deleted from Section 2 paragraph (b) under Column 2.
Underscoring supplied to indicate changes from Column 1 to Column 2. Solid lines in Column 2 denote additions in whole or part. The words capitalized in Column 2 place emphasis on wording which changes effect of prior regulations shown in Column 1.

Column 1

Line	Item	Articles	Less Carload Ratings	Carload Minimum (Pounds)	Carload Ratings
1	14575	Section 3.—Where the carrier determines that space at the carrier's station does not admit of the examination there of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. Upon demand made therefor at the time of delivery, even though space does so admit, the carrier may at its option elect to have the examination at the warehouse of the consignee or such other place as the two may agree. Such inspection shall be a joint inspection and shall be made within twenty-four (24) hours after delivery of the eggs by the carrier. The carrier shall have the right in such instances to mark the cases so delivered or examined for the purpose of identification. No cases shall be opened until both parties are present. However, where carload shipments are consigned to cold storage warehouses or packing plants, inspection may be made at such plants but only in presence of authorized representatives of carrier.			
17	14580	Section 4.—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint examination of the entire contents of the shipment to determine the damage from such causes, provided demand is made therefor within such time.			
23	14585	Section 5.—On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.			
27	14586	Section 6.—In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability. Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.			
37	14587	Section 7.—In adjustment of claims for damage, the notation made on paid freight receipt or other document by joint inspectors shall be considered conclusive as to extent of damage. Any investigation necessary for purpose of determining carrier's liability for such damage shall be made promptly and claims shall be settled upon their merits. No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier. If, by reconditioning any damaged case or contents, there shall result an enhanced value because of such reconditioning of such case or contents, such increased value shall be credited to the claim.			

Column 2

Line	Item	Articles	Less Carload Ratings	Carload Minimum (Pounds)	Carload Ratings
1	14575-A	Section 3.—Where the carrier determines that space at the carrier's station does not admit of the examination there of a given shipment which requires inspection, the consignee shall be entitled to demand an examination of such shipment at his own warehouse. Upon demand made therefor at the time of delivery, even though space does so admit, the carrier may at its option elect to have the examination at the warehouse of the consignee or such other place as the two may agree. Such inspection shall be a joint inspection and shall be made within twenty-four (24) hours after delivery of the eggs by the carrier. The carrier shall have the right in such instances to mark the cases so delivered or examined for the purpose of identification. No cases shall be opened until both parties are present. However, where carload shipments are consigned to cold storage warehouses or packing plants, inspection may be made at such plants but only in presence of authorized representatives of carrier.			
17	14580-A	Section 4.—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint examination of the entire contents of the shipment to determine the damage from such causes, provided demand is made therefor within such time.			
23	14585-A	Section 5.—On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.			
27	14586-A	Section 6.—In connection with shipments of eggs, except storage packed eggs, storage packed dirties and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability. Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.			
37	14587-A	Section 7.—In adjustment of claims for damage, the notation made on paid freight receipt or other document by joint inspectors shall be considered conclusive as to extent of damage. Any investigation necessary for purpose of determining carrier's liability for such damage shall be made promptly and claims shall be settled upon their merits. No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier. If, by reconditioning any damaged case or contents, there shall result an enhanced value because of such reconditioning of such case or contents, such increased value shall be credited to the claim.			

Before the

Interstate Commerce Commission

I.C.C. DOCKET NO. 30030

SPECIAL REGULATIONS - EGGS

EXHIBIT NO 35
Page 1 of 57 pages
Witness Leon Schilt

Submitted on Behalf of

The Secretary of Agriculture

Brooklyn, New York
December 15, 1949

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STATEMENT SHOWING FOR THE CLASS I RAILROADS OF THE UNITED STATES, STATISTICS COVERING THE TREND OF SHELL EGG TRAFFIC VOLUME IN CARLOADS, TONS, AND AVERAGE TONS PER CAR ORIGINATED; FREIGHT REVENUE IN DOLLARS; AVERAGE REVENUE PER CAR AND PER TON ORIGINATED FOR THE YEARS 1939 TO 1948 INCLUSIVE, AND FOR THE FIRST SIX MONTHS' PERIODS OF 1946 TO 1949 INCLUSIVE, WITH PERCENTAGE RELATIONSHIP TO THE YEAR 1939 AS INDEX 100

Year	Carloads Originated	Index	Tons Originated	Index	Average Tons per Car Originated	Index	Freight Revenue (Dollars)	Index	Average Revenue per Carload Originated (Dollars)	Index	Average Revenue per Ton Originated (Dollars)	Index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1939	27,690	100	316,286	100	11.42	100	6,278,991	100	226.76	100	19.85	100
1940	29,746	107	340,071	108	11.43	100	6,470,624	103	217.53	96	19.03	96
1941	34,310	124	391,973	124	11.42	100	6,653,998	106	193.94	86	16.98	86
1942	32,642	118	398,388	126	12.20	107	6,501,511	104	199.18	88	16.32	82
1943	33,045	119	517,167	164	15.65	137	8,565,293	136	259.20	114	16.56	83
1944	45,873	166	753,133	238	16.42	144	12,479,177	199	272.04	120	16.57	83
1945	43,590	157	711,908	225	16.33	143	12,440,905	198	285.41	126	17.48	88
1946	38,530	139	618,178	195	16.04	140	11,527,115	184	299.17	132	18.65	94
1947	26,800	97	423,720	134	15.81	138	10,585,213	167	394.97	174	24.98	126
1948	21,424	77	328,852	104	15.35	134	9,641,928	154	450.05	198	29.32	148
		Percentage for Year Indicated		Percentage for Year Indicated				Percentage for Year Indicated				
First 6 Mos. 1946	21,123	55	341,411	55	16.16	142	6,055,033	53	286.66	126	17.74	89
First 6 Mos. 1947	15,355	57	244,857	58	15.95	140	5,941,538	56	386.94	171	24.27	122
First 6 Mos. 1948	12,678	59	200,629	61	15.82	139	5,759,588	60	454.30	200	28.71	145
First 6 Mos. 1949	5,879	—	80,522	—	13.70	120	2,662,282	—	452.85	200	33.06	167

Source: I.C.C. Freight Commodity Statistics.

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State of Origin	Year	Destination Markets: New York, N.Y.		Chicago, Ill.		Philadelphia, Pa.		Boston, Mass.		San Francisco, Calif.		Los Angeles, Calif.		Baltimore, Md.		Atlanta, Ga.		Cincinnati, Ohio		Detroit, Mich.		New Orleans, La.		Number of Reporting Markets Showing Receipts
			Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)
Iowa	1939	1,488,127	23.39	1,539,597	30.27	132,778	11.56	329,723	29.33	—	—	—	—	37,819	7.84	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1944	1,327,695	20.16	1,006,708	21.33	51,474	4.73	148,684	10.36	36,881	2.10	1,970	0.17	64,702	9.99	N.A.	—	N.A.	—	N.A.	—	N.A.	—	7
	1947	2,106,683	30.17	1,027,456	26.13	136,283	11.05	190,109	15.12	100,328	8.83	73,142	4.63	159,896	25.96	105,204	21.54	27,498	4.80	19,793	1.81	51,078	12.21	11
	1948	2,106,433	33.08	1,472,075	25.85	139,198	10.56	250,907	19.02	74,902	7.06	49,049	3.62	148,480	28.39	117,270	20.70	35,724	5.49	39,394	3.07	54,831	11.51	11
Kansas	1939	143,800	2.26	86,108	1.69	33,897	2.95	44,834	3.99	3,636	.42	38,477	3.67	8,004	1.66	N.A.	—	N.A.	—	N.A.	—	N.A.	—	7
	1944	33,906	.51	66,427	1.41	1,682	.15	31,528	2.20	6,719	.38	12,651	1.08	2,280	.35	N.A.	—	N.A.	—	N.A.	—	N.A.	—	7
	1947	14,950	.21	16,505	.40	4,766	.40	17,284	1.37	30,467	2.68	149,650	9.48	4,800	.78	13,207	2.70	480	.08	20,166	1.84	128,599	30.74	11
	1948	7,149	.11	23,474	.41	600	.05	36,852	2.79	33,611	3.17	117,113	8.65	7,200	1.38	19,172	3.38	—	—	12,037	.94	132,169	27.74	10
Kentucky	1939	2,077	.03	7,118	.14	3,766	.33	264	.02	—	—	—	—	1	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1944	1,804	.03	6,575	.14	1,280	.12	4,703	.33	—	—	—	—	633	.10	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1947	4,405	.06	1,989	.05	2,952	.25	—	—	—	—	—	—	—	—	6,296	1.29	66,010	11.53	7,873	.72	36	.01	7
	1948	11,140	.17	1,181	.02	2,328	.18	—	—	—	—	—	—	—	—	5,024	.89	88,856	12.60	11,339	.88	1,840	.39	7
Louisiana	1939	—	—	—	—	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	—
	1944	520	.01	—	—	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1947	—	—	—	—	—	—	—	—	600	.03	—	—	600	.09	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1948	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	10,991	2.63	1
Maine	1939	1	—	—	—	—	—	119,864	10.66	—	—	—	—	—	—	—	—	—	—	5	—	13,248	2.78	2
	1944	1	—	—	—	—	—	269,130	18.75	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	2
	1947	1,177	.02	—	—	—	—	164,492	13.08	—	—	—	—	1,200	.18	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1948	—	—	—	—	—	—	208,931	15.84	—	—	—	—	—	—	23	—	—	—	—	—	—	—	3
Maryland	1939	50,572	.79	—	—	60,227	5.24	15	—	—	—	—	—	—	—	78	.01	—	—	—	—	—	—	2
	1944	74,920	1.14	1,800	.04	99,315	9.04	—	—	—	—	—	—	107,593	22.30	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1947	40,787	.58	984	.02	57,306	4.86	—	—	—	—	—	—	189,911	29.21	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1948	41,223	.65	—	—	51,740	3.93	275	.02	—	—	—	—	52,966	8.61	—	—	—	—	200	.02	—	—	5
Massachusetts	1939	4,757	.07	—	—	600	.05	116,994	10.40	—	—	—	—	37,307	7.13	—	—	—	—	1	—	—	—	5
	1944	40,636	.62	—	—	600	.05	434,744	30.28	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1947	15,907	.23	—	—	400	.03	342,381	27.22	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1948	775	.01	—	—	—	—	245,455	18.60	—	—	—	—	—	—	781	.16	—	—	—	—	600	.14	5
Michigan	1939	28,019	.44	13,597	.27	4,388	.38	16,523	1.47	—	—	—	—	—	—	—	—	—	—	7	—	—	—	3
	1944	12,766	.19	38,838	.82	525	.05	8,895	.62	—	—	—	—	2,438	.51	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1947	13,471	.19	10,477	.26	19	—	32,281	2.57	600	.05	—	—	3,645	.56	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1948	2,310	.04	4,977	.09	625	.05	—	—	—	—	—	—	492	.08	—	—	520	.09	400,268	36.55	2,400	.57	9
Minnesota	1939	821,851	12.92	851,265	16.73	231,453	20.15	55,744	4.96	—	—	600	.06	39,332	8.15	N.A.	—	500	.07	393,042	30.60	—	—	5
	1944	583,381	8.86	977,810	20.72	173,291	16.77	23,810	2.08	74,879	4.26	3,600	.31	96,870	14.90	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1947	1,431,376	20.50	975,717	23.87	338,262	28.70	60,734	4.91	73,240	6.45	144,725	9.17	197,568	32.10	55,568	11.38	57,500	10.04	70,908	6.48	65,438	15.64	7
	1948	1,278,569	20.08	1,569,834	27.57	373,268	28.33	87,259	6.61	58,774	5.54	89,406	6.60	102,689	34.94	91,051	16.07	78,207	11.09	130,791	10.18	73,205	15.36	11
Mississippi	1939	778	.01	—	—	400	.03	7	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1944	—	—	—	—	—	—	3,500	.24	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	1
	1947	1,142	.02	988	.02	—	—	—	—	—	—	—	—	—	—	139	.03	—	—	—	—	10,653	2.55	4
	1948	—	—	580	.01	—	—	—	—	—	—	—	—	—	—	10	—	—	—	29	—	14,189	2.98	4
Missouri	1939	131,964	2.07	609,513	10.02	33,413	2.91	55,157	4.91	2,320	.27	1,109	.12	24,202	5.02	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1944	12,162	.18	117,974	2.50	5,356	.49	8,400	.38	600	.03	2,400	.20	8,796	1.35	N.A.	—	N.A.	—	N.A.	—	N.A.	—	7
	1947	45,705	.65	67,829	1.42	3,637	.31	6,546	.52	9,600	.85	16,674	1.06	11,199	1.82	96,979	19.85	5,620	.98	3,052	.28	25,003	6.22	11
	1948	23,045	.36	121,060	2.13	16,283	1.24	4,995	.38	3,000	.28	16,052	1.25	6,784	1.30	105,038	18.54	1,660	.24	5,617	.44	21,879	4.59	11
Montana	1939	—	—	273	.01	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	1
	1944	—	—	220	—	—	—	—	—	600	.03	6,000	.51	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1947	—	—	—	—	—	—	600	.05	—	—	2,881	.18	—	—	—	—	—	—	—	—	—	—	2
	1948	—	—	—	—	—	—	—	—	—	—	15,287	1.13	—	—	—	—	—	—	—	—	—	—	1

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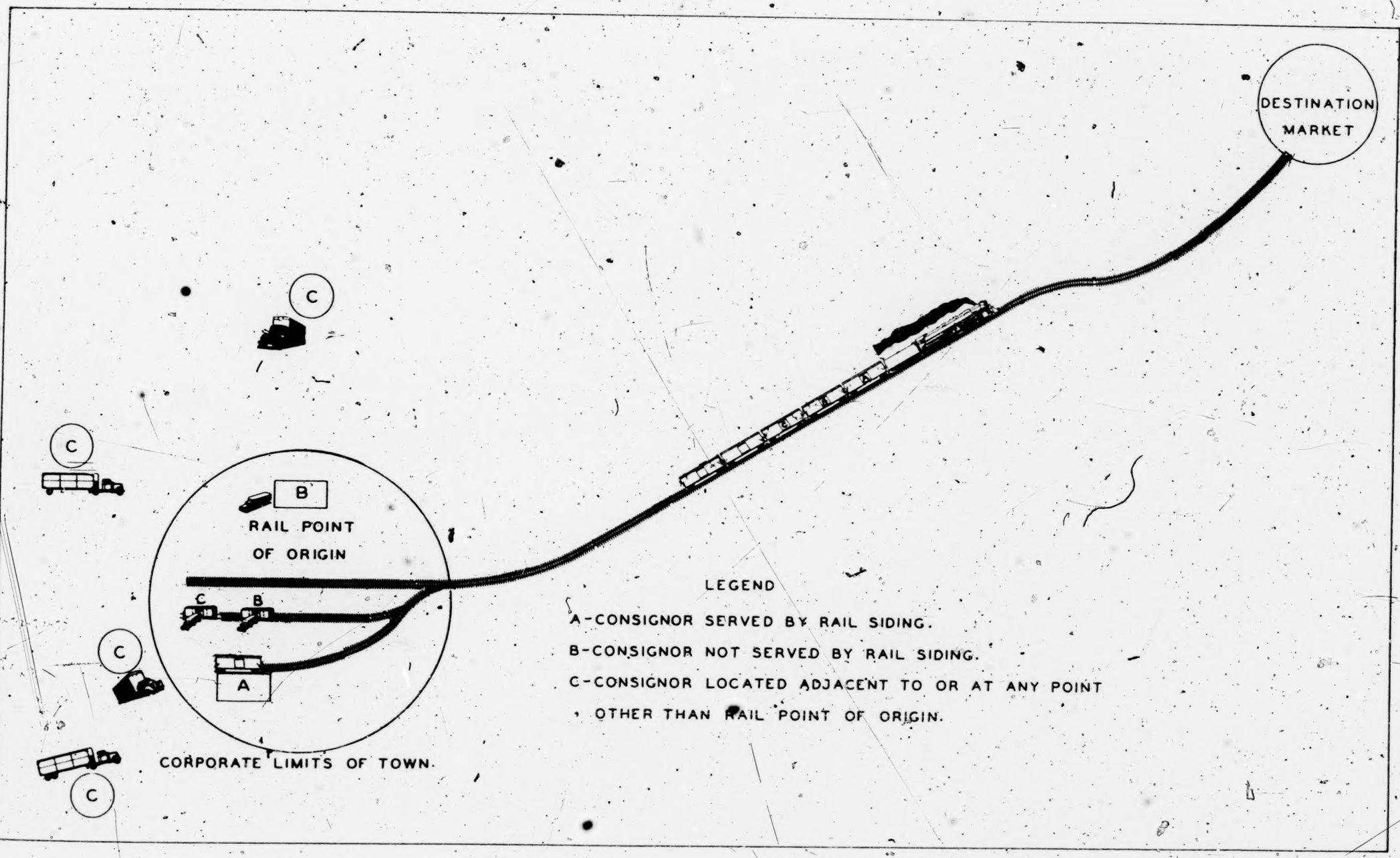
ILLUSTRATION REPRESENTING EGG TRANSPORTATION BY RAIL.



STATEMENT SHOWING THE INDIVIDUAL STATES OF ORIGIN AND THE TOTAL NUMBER OF CASES OF SHELL EGGS RECEIVED FROM THESE STATES BY RAIL AND TRUCK AT 11 PRINCIPAL DESTINATION MARKETS IN THE UNITED STATES FOR THE REPRESENTATIVE YEARS OF 1939, 1944, 1947, AND 1948. ALSO SHOWN IS THE PERCENTAGE EACH STATE'S SHIPMENTS ARE TO THE TOTAL RECEIPTS AT THE DESTINATION MARKETS; THE NUMBER OF MARKETS REPORTING RECEIPTS FROM THE ORIGINATING STATES; AND A SUMMARY OF THE NUMBER OF STATES SHIPPING EGGS TO THE DESTINATION MARKETS

State of Origin	Year	Destination Markets: New York, N.Y.	Percent	Chicago, Ill.	Percent	Philadelphia, Pa.	Percent	Boston, Mass.	Percent	San Francisco, Calif.	Percent	Los Angeles, Calif.	Percent	Baltimore, Md.	Percent	Atlanta, Ga.	Percent	Cincinnati, Ohio	Percent	Detroit, Mich.	Percent	New Orleans, La.	Percent	Number of Reporting Markets' Showing Receipts
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)
Alabama	1939	56	---	2	---	---	---	---	---	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	2
	1944	1	---	---	---	---	---	---	---	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	2
	1947	---	---	---	---	---	---	---	---	---	---	445	0.04	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	1
	1948	---	---	30	---	---	---	---	---	---	---	---	---	---	---	7,340	1.50	---	---	---	---	---	---	1
Arizona	1939	---	---	---	---	---	---	---	---	---	---	---	---	---	---	2,761	.49	---	---	5	---	547	0.11	4
	1944	---	---	---	---	---	---	---	---	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	---
	1947	---	---	---	---	---	---	---	---	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	---
	1948	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---
Arkansas	1939	---	---	201	---	---	---	834	0.07	---	---	589	0.04	---	---	---	---	---	---	---	---	---	---	1
	1944	600	0.01	1,064	0.02	10	---	---	---	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	2
	1947	---	---	---	---	---	---	---	---	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	3
	1948	---	---	---	---	---	---	---	---	---	---	---	---	---	---	200	.04	---	---	---	---	3,858	.92	2
California	1939	52,897	.83	4,375	.09	17,563	1.53	3,600	.32	833,629	96.27	814,590	77.77	4,100	.85	N.A.	---	N.A.	---	13	---	5,673	1.19	2
	1944	40,301	.61	6,528	.14	1,984	.18	---	---	1,261,177	71.80	750,813	64.12	620	.10	N.A.	---	N.A.	---	N.A.	---	N.A.	---	7
	1947	623	.01	---	---	---	---	---	---	734,200	64.65	571,258	36.18	---	---	---	---	---	---	---	---	---	---	6
	1948	1,800	.03	---	---	---	---	---	---	785,442	74.01	609,676	45.04	---	---	---	---	---	---	---	---	---	---	3
Colorado	1939	---	---	10,500	.21	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	3
	1944	---	---	12,583	.27	---	---	---	---	396	.05	5,178	.49	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	3
	1947	768	.01	40,198	.98	600	.05	---	---	1,800	.10	7,395	.63	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	3
	1948	---	---	12,205	.21	---	---	---	---	2,750	.24	27,199	1.72	---	---	---	---	---	---	---	---	---	---	5
Connecticut	1939	6,563	.10	---	---	---	---	---	---	3,640	.34	3,985	.30	---	---	---	---	---	---	---	---	---	---	3
	1944	73,865	1.12	300	.01	---	---	3,125	.28	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	2
	1947	24,880	.36	---	---	---	---	20,017	1.39	---	---	---	---	600	.09	N.A.	---	N.A.	---	N.A.	---	N.A.	---	4
	1948	4,687	.07	---	---	---	---	33,934	2.70	---	---	---	---	---	---	---	---	---	---	---	---	---	---	2
Delaware	1939	21,665	.34	---	---	14,294	1.24	51,166	3.88	---	---	---	---	---	---	---	---	---	---	---	---	---	---	3
	1944	26,814	.41	---	---	23,340	2.12	2	---	---	---	---	---	1,237	.26	N.A.	---	N.A.	---	13	---	---	---	---
	1947	7,804	.11	---	---	6,268	.53	---	---	---	---	---	---	862	.13	N.A.	---	N.A.	---	N.A.	---	N.A.	---	4
	1948	5,427	.09	---	---	6,875	.52	---	---	---	---	---	---	2,340	.38	---	---	---	---	N.A.	---	N.A.	---	3
Florida	1939	383	.01	---	---	---	---	---	---	---	---	---	---	248	.05	---	---	---	---	---	---	---	---	3
	1944	18	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	3
	1947	499	.01	---	---	---	---	600	.04	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	1
	1948	13	---	---	---	---	---	---	---	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	2
Georgia	1939	321	.01	---	---	---	---	---	---	---	---	---	---	---	---	352	.07	---	---	---	---	---	---	2
	1944	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	200	.03	2	---	---	---	2
	1947	---	---	83	---	---	---	---	---	---	---	---	---	---	---	N.A.	---	N.A.	---	---	---	---	---	3
	1948	---	---	189	---	---	---	---	---	---	---	---	---	---	---	N.A.	---	N.A.	---	N.A.	---	N.A.	---	1
Idaho	1939	37,510	.59	---	---	1,172	.10	---	---	336	.04	16,503	1.58	600	.12	26,871	5.50	---	---	N.A.	---	N.A.	---	---
	1944	7,296	.11	500	.01	---	---	---	---	36,431	2.07	54,199	4.63	---	---	29,702	5.24	---	---	---	---	---	---	3
	1947	---	---	---	---	---	---	---	---	2,506	.22	26,100	1.65	---	---	N.A.	---	N.A.	---	3	---	---	---	3
	1948	600	.01	480	.01	---	---	83	.01	1,266	.21	15,586	1.15	---	---	---	---	---	---	N.A.	---	N.A.	---	5
Illinois	1939	325,362	5.11	544,453	10.70	105,259	9.16	109,973	9.78	---	---	---	---	72,684	15.06	---	---	---	---	---	---	---	---	4
	1944	162,151	2.46	875,467	18.55	57,521	5.24	38,142	2.66	3,339	.19	600	.05	65,439	10.06	N.A.	---	N.A.	---	N.A.	---	N.A.	---	2
	1947	156,854	2.25	392,924	9.61	110,232	9.35	54,592	4.34	2,400	.21	2,960	.19	59,198	9.62	125,785	25.75	147,135	25.70	63,034	5.76	14,060	3.36	5
	1948	161,367	2.53	432,140	7.59	154,196	11.72	93,752	7.11	3,578	.34	23,599	1.74	49,639	9.49	148,896	26.28	230,268	32.64	139,823	10.89	68,030	14.28	7
Indiana	1939	387,493	5.78	92,004	1.81	28,035	2.44	37,452	3.33	---	---	---	---	3,772	.78	N.A.	---	N.A.	---	N.A.	---	N.A.	---	11
	1944	450,323	6.84	162,165	3.44	2,385	.22	8,697	.61	---	---	---	---	600	.09	N.A.	---	N.A.	---	N.A.	---	N.A.	---	11
	1947	548,220	7.85	37,571	.92	3,439	.29	12,923	1.03	---	---	---	---	---	---	7,215	1.44	135,766	23.71	96,275	8.79	600	.14	5
	1948	332,020	5.21	43,655	.77	9,327	.71	19,397	1.47	---	---	---	---	324	.06	10,459	1.85	163,296	23.15	112,596	8.77	1,614	.34	5
																								8
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State of Origin	Year	Destination Markets: New York, N.Y.		Chicago, Ill.		Philadelphia, Pa.		Boston, Mass.		San Francisco, Calif.		Los Angeles, Calif.		Baltimore Md.		Atlanta, Ga.		Cincinnati, Ohio		Detroit, Mich.		New Orleans, La.		Number of Reporting Markets Showing Receipts
			Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)
Nebraska	1939	84,036	1.32	409,291	8.05	31,923	2.76	20,429	1.82	7,515	0.87	24,760	2.36	34,039	7.05	N.A.	—	N.A.	—	N.A.	—	N.A.	—	7
	1944	47,594	.72	69,720	1.48	2,865	.26	19,963	1.39	45,561	2.59	9,369	.80	16,564	2.55	N.A.	—	N.A.	—	N.A.	—	N.A.	—	7
	1947	49,601	.71	48,607	1.19	7,994	.68	8,004	.64	120,847	10.64	143,927	9.12	34,491	5.60	11,334	2.32	5,800	1.01	2,955	0.27	24,320	5.81	11
	1948	19,785	.31	68,734	1.21	15,986	1.21	5,687	.43	75,486	7.11	98,179	7.25	16,304	3.12	980	.17	8,005	1.13	8,020	.62	11,671	2.45	11
Nevada	1939	—	—	—	—	—	—	—	—	1	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	1
	1944	—	—	—	—	—	—	—	—	463	.03	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	1
	1947	—	—	—	—	—	—	—	—	22	—	—	—	—	—	—	—	—	—	—	—	—	—	1
	1948	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
New Hampshire	1939	3,045	.05	—	—	—	—	108,868	9.68	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	2
	1944	3,758	.06	—	—	—	—	177,228	12.34	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	2
	1947	3,554	.05	—	—	—	—	175,751	13.97	—	—	—	—	—	—	190	.04	—	—	—	—	—	—	3
	1948	475	.01	—	—	—	—	120,769	9.15	—	—	—	—	—	—	—	—	—	—	1	—	—	—	3
New Jersey	1939	231,181	3.63	—	—	34,581	3.01	402	.04	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1944	484,309	7.35	—	—	72,260	6.58	3,600	.25	—	—	—	—	1,780	.27	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1947	321,549	4.61	—	—	15,131	1.28	600	.05	—	—	—	—	—	—	600	.12	—	—	—	—	—	—	4
	1948	430,364	6.76	—	—	21,235	1.61	4,873	.37	—	—	—	—	—	—	—	—	—	—	1	—	—	—	4
New Mexico	1939	—	—	—	—	—	—	—	—	—	—	21,647	2.07	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	1
	1944	—	—	—	—	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	1
	1947	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
	1948	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
New York	1939	883,192	13.88	—	—	6,949	.60	19,205	1.71	—	—	—	—	17,612	3.65	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1944	1,787,640	27.14	4,260	.09	3,648	.33	55,699	3.88	—	—	—	—	1,125	.17	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1947	999,943	14.32	—	—	6,987	.59	57,300	4.56	—	—	—	—	5,502	.89	6	—	—	—	12	—	—	—	6
	1948	777,316	12.21	—	—	4,594	.35	64,516	4.89	—	—	—	—	831	.16	10	—	347	.05	133	.01	—	—	7
North Carolina	1939	403	.01	—	—	4,065	.35	3	—	—	—	—	—	2,837	.59	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1944	2,988	.05	600	.01	305	.03	—	—	—	—	—	—	1,231	.19	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1947	1,033	.01	600	.01	4,695	.38	—	—	—	—	—	—	833	.11	686	.14	—	—	—	—	—	—	5
	1948	3,470	.05	36	—	6,592	.50	—	—	—	—	—	—	—	—	2,607	.46	—	—	25	—	—	—	5
North Dakota	1939	8,484	.13	22,270	.44	5,621	.49	4,947	.36	—	—	96	.01	400	.08	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1944	11,701	.18	42,090	.89	3,418	.31	1,534	.11	—	—	472	.04	2,400	.37	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1947	20,190	.29	51,270	1.25	9,929	.84	2,364	.19	600	.05	3,000	.19	4,390	.71	3,223	.66	520	.09	—	—	2,811	.67	10
	1948	14,869	.23	72,332	1.27	3,670	.28	2,736	.21	600	.06	3,600	.27	4,055	.78	1,200	.21	620	.09	2,442	.19	1,909	.40	11
Ohio	1939	182,423	2.87	1,805	.04	33,954	2.96	12,234	1.09	—	—	—	—	3,873	.80	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1944	169,605	2.57	13,629	.29	31,876	2.90	7,909	.55	—	—	—	—	4,493	.69	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1947	139,583	2.00	2,886	.07	62,690	5.32	17,634	1.40	—	—	—	—	2,391	.39	1,800	.37	113,628	19.85	396,055	36.17	—	—	8
	1948	161,341	2.53	1,119	.02	50,523	3.83	23,061	1.75	600	.06	600	.04	1,339	.26	—	—	87,616	12.42	384,285	29.92	—	—	9
Oklahoma	1939	1,213	.02	3,969	.08	651	.06	19	—	—	—	1,709	.16	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1944	2,384	.04	2,851	.06	—	—	4,831	.34	3,231	.18	5,270	.45	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1947	—	—	400	.02	—	—	—	—	1,800	.16	1,800	.11	—	—	95	.02	—	—	—	—	—	—	5
	1948	3,723	.06	330	.01	—	—	—	—	1,800	.17	2,028	.15	—	—	—	—	—	—	3	—	3,242	.77	6
Oregon	1939	54,725	.86	6,000	.12	10,437	.91	4,200	.37	5,508	.64	39,541	3.78	12,933	2.68	N.A.	—	N.A.	—	N.A.	—	N.A.	—	7
	1944	51,637	.78	6,695	.14	1,848	.17	—	—	36,861	2.10	22,512	1.92	1,872	.29	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1947	5,564	.08	—	—	—	—	—	—	20,574	1.81	5,365	.34	—	—	—	—	—	—	—	—	—	—	3
	1948	1,248	.02	—	—	—	—	—	—	12,470	1.17	600	.04	—	—	—	—	—	—	—	—	—	—	3
Pennsylvania	1939	527,702	8.29	—	—	255,376	22.23	155	.01	—	—	—	—	28,073	5.82	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1944	955,322	14.50	—	—	484,282	44.08	2,367	.16	—	—	—	—	80,391	12.36	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1947	853,301	12.22	2,064	.05	351,541	29.82	2,390	.19	—	—	—	—	11,066	1.80	—	—	600	.10	—	—	—	—	6
	1948	819,652	12.87	8	—	403,117	30.59	1,395	.11	—	—	—	—	5,258	1.01	—	—	—	—	22	—	—	—	6

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State of Origin	Year	Destination Markets: New York, N.Y.		Chicago, Ill.		Philadelphia Pa.		Boston, Mass.		San Francisco, Calif.		Los Angeles, Calif.		Baltimore Md.		Atlanta, Ga.		Cincinnati, Ohio		Detroit, Mich.		New Orleans, La.		Number of Reporting Markets Showing Receipts
			Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)
Rhode Island	1939	1,880	0.03	—	—	—	—	328	0.00	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	2
	1944	1,716	.03	—	—	—	—	9,565	.67	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	2
	1947	7,518	.11	—	—	—	—	2,109	.17	—	—	—	—	—	—	882	0.18	—	—	—	—	—	—	3
	1948	133	—	—	—	—	—	8,675	.66	—	—	—	—	—	—	—	—	—	—	—	—	—	—	2
South Carolina	1939	40	—	—	—	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	1
	1944	—	—	—	—	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	1
	1947	40	—	—	—	—	—	—	—	—	—	—	—	—	—	39	.01	—	—	—	—	—	—	2
	1948	524	.01	—	—	—	—	—	—	—	—	—	—	—	—	73	.01	—	—	50	—	—	—	3
South Dakota	1939	49,449	.78	239,056	4.70	17,324	1.51	18,836	1.68	456	0.05	—	—	9,444	1.96	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1944	9,791	.15	77,613	1.54	5	—	4,346	.30	3,062	.17	2,468	.21	3,673	.56	N.A.	—	N.A.	—	N.A.	—	N.A.	—	7
	1947	21,198	.30	48,989	1.20	24,042	2.04	7,235	.58	4,800	.42	11,986	.76	7,080	1.15	560	.11	—	—	554	0.05	1,489	0.36	10
	1948	26,279	.41	138,890	2.43	26,407	2.00	10,356	.78	3,000	.28	6,600	.49	6,417	1.23	4,000	.71	3,393	0.48	3,703	.29	4,100	.86	11
Tennessee	1939	20,505	.32	3,524	.07	9,122	.79	—	—	—	—	—	—	6,645	1.38	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1944	6,656	.10	2,425	.05	—	—	4,508	.31	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1947	6,937	.10	1,661	.04	1,060	.09	—	—	—	—	—	—	—	—	16,655	3.41	3,248	1.57	106	.01	3,754	.90	7
	1948	10,357	.16	811	.01	2,306	.17	1,650	.13	—	—	—	—	1,508	.29	19,072	3.37	716	.10	2,195	.17	6,883	1.44	9
Texas	1939	1,400	.02	—	—	98	.01	—	—	5,833	.67	18,768	1.79	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1944	1,200	.02	—	—	—	—	4,613	.32	—	—	2,212	.19	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1947	—	—	—	—	—	—	—	—	1,205	.11	3,632	.23	—	—	1,985	.11	—	—	—	—	58,308	13.94	4
	1948	600	.01	—	—	—	—	—	—	—	—	1,200	.09	—	—	64	.01	—	—	2	—	49,845	10.16	5
Utah	1939	253,770	3.99	12,648	.25	4,800	.42	600	.05	3,630	.42	45,981	4.39	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1944	67,769	1.03	3,554	.08	1,872	.17	—	—	156,249	8.90	187,574	16.02	2,496	.38	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1947	11,435	.16	—	—	—	—	—	—	20,162	1.78	384,801	24.37	—	—	—	—	—	—	624	.06	—	—	4
	1948	74,536	1.17	600	.01	—	—	—	—	2,836	.27	298,467	22.05	—	—	—	—	—	—	3,120	.24	—	—	5
Vermont	1939	1,932	.03	—	—	—	—	25,199	2.24	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	2
	1944	227	—	—	—	—	—	109,963	7.66	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	2
	1947	604	.01	—	—	—	—	54,657	4.35	—	—	—	—	—	—	—	—	—	—	—	—	—	—	2
	1948	1,357	.02	—	—	—	—	58,251	4.42	—	—	—	—	—	—	—	—	—	—	23	—	—	—	3
Virginia	1939	79,2[illegible]	1.25	—	—	21,651	1.88	—	—	—	—	—	—	36,578	7.58	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1944	30,571	.46	—	—	16,745	1.52	600	.04	—	—	—	—	32,935	5.06	N.A.	—	N.A.	—	N.A.	—	N.A.	—	4
	1947	4,209	.06	—	—	6,761	.57	1,120	.09	—	—	—	—	10,918	1.77	—	—	—	—	—	—	—	—	4
	1948	4,484	.07	—	—	9,254	.70	—	—	—	—	—	—	9,552	1.83	—	—	42	.01	3	—	—	—	5
Washington	1939	374,047	5.88	6,861	.13	24,988	2.18	7,460	.66	2,701	.31	18,244	1.74	3,400	.70	N.A.	—	N.A.	—	N.A.	—	N.A.	—	7
	1944	28,862	.44	107,453	2.28	3,071	.28	—	—	86,322	4.91	100,930	8.42	2,544	.39	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1947	—	—	—	—	—	—	—	—	7,760	.68	5,681	.36	—	—	—	—	—	—	—	—	—	—	2
	1948	—	—	18	—	—	—	—	—	300	.03	—	—	—	—	—	—	—	—	—	—	—	—	2
West Virginia	1939	1,200	.08	—	—	4,715	.41	—	—	—	—	—	—	11,228	2.33	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1944	2,581	.04	—	—	517	.05	—	—	—	—	—	—	8,692	1.34	N.A.	—	N.A.	—	N.A.	—	N.A.	—	3
	1947	10	—	—	—	444	.04	—	—	—	—	—	—	13,674	2.22	—	—	254	.04	—	—	—	—	4
	1948	84	—	1	—	877	.07	—	—	—	—	—	—	8,116	1.55	—	—	—	—	4	—	—	—	5
Wisconsin	1939	107,469	1.69	721,051	14.17	13,793	1.20	7,700	.68	—	—	—	—	7,591	1.57	N.A.	—	N.A.	—	N.A.	—	N.A.	—	5
	1944	63,309	.96	1,109,229	23.50	56,611	5.15	22,237	1.55	1,800	.10	—	—	27,969	4.30	N.A.	—	N.A.	—	N.A.	—	N.A.	—	6
	1947	116,956	1.87	1,365,338	33.39	29,423	2.50	6,489	.52	1,800	.16	2,920	.18	36,044	5.86	4,567	.93	7,960	1.39	13,208	1.21	10,109	2.42	11
	1948	36,167	.57	1,725,037	30.30	18,444	1.40	12,668	.96	—	—	1,200	.09	36,829	7.04	9,127	1.61	2,985	.42	33,472	2.61	13,401	2.81	10
Wyoming	1939	—	—	14	—	400	.03	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	2
	1944	—	—	4	—	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.A.	—	1
	1947	1,215	.02	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1
	1948	85	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	1

State of Origin	Year	Destination Markets: New York, N.Y.		Chicago, Ill.		Philadelphia, Pa.		Boston, Mass.		San Francisco, Calif.		Los Angeles, Calif.		Baltimore, Md.		Atlanta, Ga.		Cincinnati, Ohio		Detroit, Mich.		Number of Reporting Markets Showing Receipts
			Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent		Percent	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(25)
District of Columbia	1939	9,159	0.11	—	—	157	0.01	—	—	—	—	—	—	5,246	1.09	N.A.	—	N.A.	—	N.A.	—	3
	1944	7,642	.12	—	—	—	—	—	—	—	—	—	—	25,325	3.89	N.A.	—	N.A.	—	N.A.	—	2
	1947	875	.01	—	—	155	.01	—	—	—	—	—	—	630	.10	174	.01	—	—	—	—	4
	1948	1,865	.03	—	—	—	—	—	—	—	—	—	—	55	.01	—	—	—	—	—	—	2
Canada	1939	—	—	—	—	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.
	1944	—	—	—	—	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.
	1947	—	—	—	—	—	—	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.
	1948	18	—	—	—	—	—	1,650	.11	—	—	—	—	—	—	—	—	—	—	2,113	0.17	—
Parcel Post	1939	2,402	.04	1,557	.03	890	.08	231	.02	—	—	—	—	870	.18	N.A.	—	N.A.	—	N.A.	—	N.
	1944	328	—	4,381	.09	81	.01	2,856	.20	—	—	—	—	—	—	N.A.	—	N.A.	—	N.A.	—	N.
	1947	1,909	.03	3,826	.09	—	—	5,089	.40	—	—	—	—	—	—	—	—	N.A.	—	N.A.	—	N.
	1948	1,551	.02	5,013	.09	—	—	4,139	.21	—	—	—	—	—	—	—	—	—	—	—	—	—
Total	1939	6,361,177	100.00	5,087,052	100.00	1,148,740	100.00	1,324,327	100.00	866,961	100.00	1,047,403	100.00	482,553	100.00	N.A.	—	N.A.	—	N.A.	—	N.
	1944	6,586,753	100.00	4,719,473	100.00	1,098,667	100.00	1,435,669	100.00	1,756,575	100.00	1,170,880	100.00	660,253	100.00	N.A.	—	N.A.	—	N.A.	—	N.
	1947	6,982,475	100.00	4,088,462	100.00	1,178,816	100.00	1,257,618	100.00	1,135,661	100.00	1,578,901	100.00	615,478	100.00	488,496	100.00	572,539	100.00	1,095,083	100.00	11
	1948	6,366,811 1/	100.00	5,694,009	100.00	1,317,743	100.00	1,319,298 2/	100.00	1,061,305	100.00	1,353,726	100.00	522,935	100.00	566,594	100.00	705,435	100.00	1,284,334 3/	100.00	11

Summary of the Number of States (Excluding the District of Columbia and Parcel Post) Shipping Eggs to the Above Markets

	1939	40		24		32		32		12		11		25		N.A.		N.A.		N.A.		N.
	1944	39		27		27		28		18		18		29		N.A.		N.A.		N.A.		N.
	1947	36		21		24		23		19		19		18		28		15		16		7
	1948	37 1/		25		22		25 2/		16		19		18		20		16		36 3/		11

1/ Includes 18 cases of eggs from Canada.
2/ Includes 1,650 cases of eggs from Canada (0.11 percent).
3/ Includes 2,113 cases of eggs from Canada (0.17 percent).
4/ Includes 525 cases of eggs from unknown origin (0.11 percent).

N.A. - Indicates statistics not available for the years shown.

Source: Annual Summary of Market Statistics collected and compiled by Dairy and Poultry Market News Division, Production and Marketing Administration, U.S.D.A.

The above is compiled from current information supplied voluntarily by railroads for rail receipts and from dealer-distributors for truck receipts.

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STATEMENT SHOWING SUMMARY OF SHELL EGG RECEIPTS IN CASES FOR THE PERIODS INDICATED AT 11 PRINCIPAL MARKETS VIA RAIL AND TRUCK; ALSO THE PERCENTAGE RELATIONSHIP EACH MODE OF TRANSPORTATION IS TO THE TOTAL RECEIPTS AT EACH MARKET, AND THE PERCENTAGE RELATIONSHIP THE ANNUAL TOTAL RECEIPTS ARE TO THE YEAR 1939 AS INDEX 100

Year	Via Rail	Percent	Via Truck	Percent	Total	Index 1939 = 100
			At New York City, N.Y.			
1939	4,820,791	76	1,542,386	24	6,363,177	100
1940	4,552,143	70	1,936,667	30	6,488,810	102
1941	4,072,916	67	1,966,968	33	6,039,884	95
1942	3,543,986	61	2,271,234	39	5,815,220	91
1943	4,105,083	64	2,309,872	36	6,414,955	101
1944	3,776,708	57	2,810,045	43	6,586,753	104
1945	5,900,090	77	1,754,042	23	7,654,132	120
1946	5,520,299	71	2,293,637	29	7,813,936	123
1947	4,568,309	65	2,414,166	35	6,982,475	110
1948	3,496,346	55	2,869,495	45	6,366,841	100
			At Chicago, Illinois			
1939	2,020,303	40	3,066,749	60	5,087,052	100
1940	1,964,624	37	3,396,894	63	5,361,518	105
1941	1,767,934	35	3,260,045	65	5,027,979	99
1942	1,757,166	34	3,461,109	66	5,218,275	103
1943	1,670,161	34	3,266,757	66	4,936,918	97
1944	1,911,389	41	2,808,084	59	4,719,473	93
1945	1,483,002	37	2,556,131	53	4,039,133	79
1946	2,271,416	41	3,314,411	59	5,585,827	110
1947	1,236,316	30	2,852,146	70	4,088,462	80
1948	1,849,185	32	3,844,824	68	5,694,009	112
			At Philadelphia, Pennsylvania			
1939	703,675	61	445,065	39	1,148,740	100
1940	666,951	53	583,463	47	1,250,414	109
1941	526,580	45	651,506	55	1,178,086	103
1942	388,335	35	706,931	65	1,095,266	95
1943	499,154	44	625,406	56	1,124,560	98
1944	380,923	35	717,744	65	1,098,667	96
1945	678,020	58	496,409	42	1,174,429	102
1946	635,424	51	601,640	49	1,237,064	108
1947	491,632	42	687,184	58	1,178,816	103
1948	447,544	34	870,199	66	1,317,743	115
			At Boston, Massachusetts			
1939	755,844	67	368,483	33	1,124,327	100
1940	616,720	51	506,377	49	1,123,097	100
1941	592,456	48	640,707	52	1,233,163	110
1942	431,549	33	875,743	67	1,307,292	116
1943	754,114	51	739,309	49	1,493,423	133
1944	454,058	32	981,611	68	1,435,669	128
1945	757,186	58	537,765	42	1,294,951	115
1946	448,218	37	778,314	63	1,226,532	109
1947	404,349	32	853,269	68	1,257,618	112
1948	483,211	37	836,087	63	1,319,298	117

Total Receipts at Four 1/ Markets

Year	Via Rail	Percent	Index	Via Truck	Percent	Index	Via Rail and Truck	Index
1939	8,300,613	60	100	5,422,683	40	100	13,723,296	100
1940	7,800,438	55	92	6,423,401	45	113	14,223,839	104
1941	6,959,886	52	87	6,519,226	48	120	13,479,112	98
1942	6,121,036	46	77	7,315,017	54	135	13,436,053	98
1943	7,028,512	50	83	6,941,344	50	125	13,969,856	102
1944	6,523,078	47	78	7,317,484	53	133	13,840,562	101
1945	8,818,298	62	103	5,344,347	38	95	14,162,645	103
1946	8,875,357	56	93	6,988,002	44	110	15,863,359	116
1947	6,700,606	50	83	6,806,765	50	125	13,507,371	98
1948	6,277,286	43	72	8,420,605	57	143	14,697,891	107

1/ New York, N.Y.; Chicago, Ill.; Philadelphia, Pa.; and Boston, Mass.

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Year	Via Rail	Percent	Via Truck	Percent	Total	Index 1939 = 100
At San Francisco, California						
1939	N.A.	---	N.A.	---	865,961	100
1940	[illegible],719	10	839,475	90	928,194	107
1941	132,428	13	863,684	87	996,112	115
1942	211,588	19	1,046,450	81	1,266,038	149
1943	523,591	40	772,630	60	1,296,221	150
1944	819,326	47	937,249	53	1,756,575	203
1945	534,808	41	740,999	59	1,275,807	147
1946	383,172	33	772,961	67	1,156,133	134
1947	369,474	33	766,187	67	1,135,661	131
1948	254,219	24	807,086	76	1,061,305	123
At Los Angeles, California						
1939	N.A.	---	N.A.	---	1,047,403	100
1940	N.A.	---	N.A.	---	1,115,389	107
1941	85,040	7	1,089,220	93	1,174,260	112
1942	98,994	8	1,138,224	92	1,237,218	118
1943	370,461	30	845,733	70	1,216,194	116
1944	292,702	25	878,178	75	1,170,880	112
1945	756,096	61	477,837	39	1,233,933	118
1946	774,853	47	856,865	53	1,631,718	156
1947	621,187	39	958,714	61	1,578,901	151
1948	340,553	25	1,013,173	75	1,353,726	129
At Baltimore, Maryland						
1939	N.A.	---	N.A.	---	482,553	100
1940	N.A.	---	N.A.	---	547,035	113
1941	N.A.	---	N.A.	---	515,142	107
1942	N.A.	---	N.A.	---	553,263	115
1943	N.A.	---	N.A.	---	600,873	125
1944	318,812	48	336,439	52	650,251	135
1945	385,325	72	149,809	38	535,134	111
1946	374,374	71	151,917	39	526,291	109
1947	521,136	85	94,342	15	615,478	128
1948	426,868	82	96,067	18	522,935	108

Year	Via Rail	Percent	Via Truck	Percent	Total	Index 1947 = 100
At Atlanta, Georgia						
1947	133,417	27	355,079	73	488,496	1/ 100
1948	80,997	14	485,597	86	566,594	116
At Cincinnati, Ohio						
1947	64,419	11	508,120	89	572,539	1/ 100
1948	27,219	4	578,216	96	705,435	123
At Detroit, Michigan						
1947	82,639	8	1,012,444	92	1,095,083	1/ 100
1948	90,574	7	1,193,760	93	1,284,334	117
At New Orleans, Louisiana						
1947	293,676	70	124,673	30	418,349	1/ 100
1948	141,907	30	334,536	70	476,443	114

1/ 1947 = Index 100.

N.A. = Breakdown of total not available.

Source: Annual Summary of Market Statistics collected and compiled by Dairy and Poultry Market News Division, Production and Marketing Administration, U.S.D.A.

Note: The above is compiled from current information supplied voluntarily by railroads for rail receipts and from dealer-distributors for truck receipts.

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Line	Year	CAUSE SYMBOLS E: Improper handling in trains, yards, or stations (Dollars)	Index 1939=100	F: Defective or unfit equipment (Dollars)	Index 1939=100	G: Temperature Failures — Improper refrigeration or ventilation (Dollars)	Index 1939=100	H: Temperature Failures — Freezing or heater failure (Dollars)	Index 1939=100	I: Delay (Dollars)	Index 1939=100	J: Theft — Entire package (Dollars)	Index 1939=100	K: Theft — Other than entire package (Dollars)	Index 1939=100	N: Train accidents (Dollars)	Index 1939=100	O: Fire, Marine and catastrophes (Dollars)	Index 1939=100
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)
		All Freight (Carload)																	
1	1939	611,960	100	957,656	100	129,115	100	285,734	100	507,722	100	106,130	100	131,278	100	742,190	100	107,263	100
2	1940	646,747	106	1,031,845	108	89,495	69	574,009	201	529,106	104	108,194	102	132,803	101	768,887	104	163,498	152
3	1941	681,850	111	1,083,683	113	70,094	54	259,146	91	569,704	112	84,731	80	115,876	88	1,191,465	161	138,550	129
4	1942	827,686	135	1,254,849	131	73,134	57	293,426	103	958,748	189	121,352	114	93,041	71	1,557,681	210	223,950	209
5	1943	1,105,037	181	1,557,897	163	129,260	100	392,862	137	778,301	153	123,731	117	72,927	56	2,025,777	273	320,953	299
6	1944	1,593,894	260	2,415,958	252	571,948	442	308,265	108	792,607	156	333,615	314	154,971	118	2,482,326	334	432,268	403
7	1945	1,859,745	304	3,246,173	339	505,613	391	318,089	111	2,397,337	472	472,896	446	206,051	157	3,178,067	428	597,117	557
8	1946	1,970,961	322	3,742,444	391	754,942	583	517,260	181	3,982,383	784	738,976	696	278,757	212	2,815,196	379	511,009	476
9	1947	2,776,070	454	4,969,711	519	836,565	646	621,821	218	5,958,507	1174	948,851	894	374,742	285	3,736,494	503	701,848	654
10	1948	3,160,085	516	6,882,148	719	964,867	746	952,515	333	7,648,247	1506	714,379	673	376,205	287	4,678,305	630	664,631	620
		Eggs, in Shell (Carload)																	
11	1939	3,438	100	989	100	504	100	579	100	10,022	100	1,277	100	383	100	11,399	100	—	—
12	1940	2,774	81	452	46	463	92	1,069	185	11,306	113	1,064	83	211	55	6,345	56	210	—
13	1941	4,655	135	2,141	216	301	60	576	99	5,450	54	1,462	114	75	20	5,352	47	—	—
14	1942	7,371	214	2,404	243	265	53	1,365	236	11,501	115	1,541	121	45	12	7,059	62	—	—
15	1943	19,383	564	2,554	258	1,260	250	675	117	4,240	42	787	62	60	16	15,183	133	1,987	—
16	1944	36,205	1053	2,472	250	6,191	1228	3,524	609	4,522	45	736	58	897	234	19,135	168	922	—
17	1945	45,024	1310	4,426	448	9,170	1819	1,296	224	22,811	228	5,015	393	267	70	45,675	401	—	—
18	1946	60,580	1762	18,899	1911	10,173	2018	2,642	456	20,220	202	3,708	290	326	85	12,695	111	4,359	—
19	1947	67,172	1954	6,886	696	17,349	3442	2,240	387	48,717	486	8,500	666	624	163	36,966	324	209	—
20	1948	53,355	1552	8,302	839	17,590	3490	21,897	3782	38,058	380	13,724	1075	266	69	20,222	177	598	—

dex =100	CAUSE SYMBOLS G: Temperature Failures — Improper refrigeration or ventilation (Dollars)	Index 1939=100	H: Temperature Failures — Freezing or heater failure (Dollars)	Index 1939=100	I: Delay (Dollars)	Index 1939=100	J: Theft — Entire package (Dollars)	Index 1939=100	K: Theft — Other than entire package (Dollars)	Index 1939=100	N: Train accidents (Dollars)	Index 1939=100	O: Fire, Marine and catastrophes (Dollars)	Index 1939=100	F: Error of employee (Dollars)	Index 1939=100	Total E, F, G, H, I, J, K, N, O and F. (Dollars)	Index 1939=100
)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)
	All Freight (Carload)																	
00	129,115	100	285,734	100	507,722	100	106,130	100	131,278	100	742,190	100	107,263	100	155,956	100	3,735,304	100
18	89,495	69	574,009	201	529,106	104	108,194	102	132,803	101	768,887	104	163,498	152	207,223	133	4,251,807	114
3	70,094	54	259,146	91	569,704	112	84,731	80	115,876	88	1,191,465	161	138,550	129	198,315	127	4,393,414	118
1	73,134	57	293,426	103	958,748	189	121,352	114	93,041	71	1,557,681	210	223,950	209	236,098	151	5,639,965	151
3	129,260	100	392,862	137	778,301	153	123,731	117	72,927	56	2,025,777	273	320,953	299	328,135	210	6,834,860	183
2	571,948	442	308,265	108	792,607	156	333,615	314	154,971	118	2,482,326	334	432,268	403	409,403	263	9,495,255	254
19	505,613	391	318,089	111	2,397,337	472	472,896	446	206,051	157	3,178,067	428	597,117	557	485,814	312	13,266,902	355
71	754,942	583	517,260	181	3,982,383	784	738,976	696	278,757	212	2,815,196	379	511,009	476	500,648	321	15,812,576	423
19	836,565	646	621,821	218	5,958,507	1174	948,851	894	374,742	285	3,736,494	503	701,848	654	853,430	547	21,778,039	583
19	964,867	746	952,515	333	7,648,247	1506	714,379	673	376,205	287	4,678,305	630	664,631	620	775,176	497	26,816,558	718
	Eggs, in Shell (Carload)																	
00	504	100	579	100	10,022	100	1,277	100	383	100	11,399	100	—	—	7,080	100	35,671	100
46	463	92	1,069	185	11,306	113	1,064	83	211	55	6,345	56	210	—	276	4	24,170	68
16	301	60	576	99	5,450	54	1,462	114	75	20	5,352	47	—	—	361	5	20,373	57
43	265	53	1,365	236	11,501	115	1,541	121	45	12	7,059	62	—	—	2,333	33	33,884	95
58	1,260	250	675	117	4,240	42	787	62	60	16	15,183	133	1,987	—	4,017	57	50,146	141
50	6,191	1228	3,524	609	4,522	45	736	58	897	234	19,135	168	922	—	11,110	157	85,714	240
48	9,170	1819	1,296	224	22,811	228	5,015	393	267	70	45,675	401	—	—	3,459	49	137,113	384
11	10,173	2018	2,642	456	20,220	202	3,708	290	326	85	12,695	111	4,359	—	7,600	107	141,202	396
96	17,349	3442	2,240	387	48,717	486	8,500	666	624	163	36,966	324	209	—	6,114	86	194,777	546
39	17,590	3490	21,897	3782	38,058	380	13,724	1075	266	69	20,222	177	598	—	1,138	16	175,150	491

[fol. 119]

Statement Showing Freight Loss and Damage Claim Payments by Class I Railways on all Carload Freight Traffic and Carload Shell Egg Traffic, for the Years 1939 to 1948 Inclusive, with Percentage Relationship to the Year 1939 as Index 100; also Percentage Carload Egg Traffic Claim Payments are to Claim Payments of all Carload Freight Traffic

Year	All Carload Traffic (Dollars)	Index	Shell Egg Carload Traffic (Dollars)	Index	Percentage Column 4 of Column 2
(1)	(2)	(3)	(4)	(5)	(6)
1939	14,050,135	100	141,209	100	1.01
1940	15,517,923	110	120,524	85	.78
1941	16,922,665	120	115,860	82	.68
1942	22,785,054	162	166,596	118	.73
1943	29,528,430	210	368,528	261	1.25
1944	41,062,900	292	645,968	457	1.57
1945	55,220,285	393	1,300,723	921	2.36
1946	64,783,636	461	2,163,846	1,532	3.34
1947	81,892,375	583	2,295,121	1,625	2.80
1948	97,448,436	694	1,995,187	1,413	2.05

Source: Freight Claim Division, Association of American Railroads

[fol. 120]

Statement Showing for Carload Shell Egg Traffic, Average Revenue Per Car Originated, Average Claim Payment Per Car Originated, and Average Net Revenue Per Car After Deducting Average Claim Payments, for the Years 1939 to 1948 Inclusive, with Percentage Relationship to the Year 1939 as Index 100

Year	Average revenue per car originated (Dollars)	Index	Average claim payment per car originated (Dollars)	Index	Average net revenue per car originated (Dollars)	Index
(1)	(2) [1]	(3)	(4) [2]	(5)	(6)	(7)
1939	226.76	100	5.10	100	221.66	100
1940	217.53	96	4.05	79	213.48	96
1941	193.94	86	3.38	66	190.56	86
1942	199.18	88	5.10	100	194.08	88
1943	259.20	114	11.15	219	248.05	112
1944	272.04	120	14.08	276	257.96	116
1945	285.41	126	29.84	585	255.57	115
1946	299.17	132	56.16	1101	243.01	110
1947	394.97	174	85.64	1679	309.33	140
1948	450.05	198	93.13	1826	356.92	161

[1] Same as Column 10, page 7.

[2] Claim payments Column 4, page 41, divided by carloads originated Column 2, page 7.

STATEMENT SHOWING SUMMARY OF TOTAL LOSS AND DAMAGE CLAIM PAYMENTS ON ALL FREIGHT AND SHELL EGG CARLOAD TRAFFIC ATTRIBUTED TO CERTAIN SPECIFIC CAUSES 1/ AS REPORTED BY THE FREIGHT CLAIM DIVISION OF THE ASSOCIATION OF AMERICAN RAILROADS FOR THE YEARS 1939 TO 1948 INCLUSIVE, WITH PERCENTAGE RELATIONSHIP TO THE YEAR 1939 AS INDEX 100

		CAUSE SYMBOLS													
		A		B		C		D		L		M			
		Unlocated Loss				Unlocated Damage				Concealed					
Line	Year	Entire package	Index	Other than entire package	Index	Freight in packages	Index	Freight not in packages	Index	Loss	Index	Damage	Index	Total A, B, C, D, L, and M	Index
		(Dollars)		(Dollars)		(Dollars)		(Dollars)		(Dollars)		(Dollars)		(Dollars)	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
		All Freight (Carload)													
1	1939	257,314	100	558,251	100	5,583,583	100	3,103,854	100	11,711	100	800,118	100	10,314,831	100
2	1940	274,891	107	654,834	117	6,073,932	109	3,277,634	106	14,761	126	970,064	121	11,266,116	109
3	1941	318,499	124	686,371	123	6,752,654	121	3,604,553	116	20,755	177	1,146,419	143	12,529,251	121
4	1942	536,497	208	971,071	174	9,937,121	178	4,223,890	136	30,081	257	1,446,429	181	17,145,089	166
5	1943	738,102	287	1,334,803	239	14,458,880	259	4,928,833	159	34,999	299	1,197,953	150	22,693,570	220
6	1944	1,316,883	512	2,171,789	389	20,586,740	369	5,714,050	184	82,781	707	1,695,402	212	31,567,645	306
7	1945	2,421,020	941	2,946,763	528	28,445,771	509	5,844,976	188	81,655	697	2,213,198	277	41,953,383	407
8	1946	2,062,346	801	3,498,021	627	33,108,584	593	7,548,076	243	108,975	931	2,645,058	331	48,971,060	475
9	1947	2,571,728	999	4,679,560	838	38,744,428	694	9,824,018	317	118,973	1016	4,175,629	522	60,114,336	583
10	1948	2,736,845	1064	6,551,180	1174	44,024,059	788	12,231,046	394	162,621	1389	4,926,127	616	70,631,878	685
		Eggs, in Shell (Carload)													
11	1939	1,017	100	163	100	102,618	100	737	100	—	—	1,003	100	105,538	100
12	1940	391	38	48	29	93,932	92	1,008	137	5	—	970	97	96,354	91
13	1941	662	65	579	355	93,282	91	217	29	77	—	670	67	95,487	90
14	1942	1,011	99	156	96	128,251	125	617	84	30	—	2,647	264	132,712	126
15	1943	1,368	135	162	99	315,109	307	579	79	8	—	1,156	115	318,382	302
16	1944	3,018	297	—	—	553,990	540	1,885	256	—	—	1,361	136	560,254	531
17	1945	6,609	650	—	—	1,151,215	1122	—	—	—	—	5,756	574	1,163,580	1103
18	1946	6,508	640	—	—	1,982,742	1932	—	—	—	—	33,394	3329	2,022,644	1917
19	1947	12,567	1236	—	—	2,067,142	2014	—	—	—	—	20,635	2057	2,100,344	1990
20	1948	8,964	881	—	—	1,801,006	1755	—	—	—	—	10,067	1004	1,820,037	1725

1/ See page 50 for explanation of "Causes."

STATEMENT SHOWING GRAND TOTAL CLAIM PAYMENTS ON ALL CARLOAD FREIGHT AND SHELL EGG TRAFFIC, AND THE PERCENTAGE RELATIONSHIP THERETO OF THE COMBINED CAUSES OF DAMAGE ATTRIBUTED IN PART AND SPECIFICALLY TO RAILROAD NEGLIGENCE FOR THE YEARS 1939 TO 1948 INCLUSIVE. ALSO SHOWN IS THE TREND OF PERCENTAGEWISE CHANGES FROM THE YEAR 1939 AS INDEX 100

Year	Grand total carload claim payments (Dollars)	Total causes A, B, C, D, L, and M claim payments (Dollars)	Percentage of grand total (Col. 2)	Index	Total causes E, F, G, H, I, J, K, N, O, and P claim payments (Dollars)	Percentage of grand total (Col. 2)	Index
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
			All Freight				
1939	14,050,135	10,314,831	73.41	100	3,735,304	26.59	100
1940	15,517,923	11,266,116	72.60	99	4,251,807	27.40	103
1941	16,922,665	12,529,251	74.04	101	4,393,414	25.96	98
1942	22,785,054	17,145,089	75.25	100	5,639,965	24.75	93
1943	29,528,430	22,693,570	76.85	105	6,834,860	23.15	87
1944	41,062,900	31,567,645	76.88	105	9,495,255	23.12	87
1945	55,220,285	41,953,383	75.97	103	13,266,902	24.03	90
1946	64,783,636	48,971,060	75.59	103	15,812,576	24.41	92
1947	81,892,375	60,114,336	73.41	100	21,778,039	26.59	100
1948	97,448,436	70,631,878	72.48	99	26,816,558	27.52	103
			Eggs, in Shell				
1939	141,209	105,538	74.74	100	35,671	25.26	100
1940	120,524	96,354	79.95	107	24,170	20.05	79
1941	115,860	95,487	82.42	110	20,373	17.58	70
1942	166,596	132,712	79.66	107	33,884	20.34	81
1943	368,528	318,382	86.39	116	50,146	13.61	54
1944	645,968	560,254	86.73	116	85,714	13.27	53
1945	1,300,723	1,163,580	89.46	120	137,143	10.54	42
1946	2,163,846	2,022,644	93.47	125	141,202	6.53	26
1947	2,295,121	2,100,344	91.51	122	194,777	8.49	34
1948	1,995,187	1,820,037	91.22	122	175,150	8.78	35

ORIGIN	DATE OF SHIPMENT	CAR NO.	DESTINATION	ROUTE	AMOUNT OF CLAIM
Chicago, Ill.	5/5/48	SRLX 6748	Jersey City, N.J.	PRR	$ 624.23
Chicago, Ill.	5/5/48	MDT 42273	Pittsburgh, Pa.	PRR	236.47
Sauk Centre, Minn.	5/5/48	PFE 14407	Albany, Ga.	GN-CB&Q-IHB-NYC	90.00
Chicago, Ill.	5/4/48	WFEX 63389	Norfolk, Va.	IHB-IC-B/4	19.65
Hastings, Nebr.	5/5/48	PFE 46414	Chicago, Ill.	CB&Q-CJ	35.02
Grinnell, Iowa	5/10/48	GARX 67968	Nashville, Tenn.	RI-IHB-C&EI-I&N	53.38
Montevideo, Minn.	5/17/48	URTX 9376	Chicago, Ill.	CMSTP&P-CJ	24.84
Algona, Iowa	5/17/48	PFE 98529	Pittsburgh, Pa.	C&NW-IHB-PRR	23.85
Marshall, Minn.	5/17/48	SRL 6684	Philadelphia, Pa.	C&NW-IHB-NKP-W&LE-P&WVA-Reading	198.95
Worthington, Minn.	5/18/48	SRL 4676	Norton, Va.	CRI&P-IHB-PRR-N&W	204.64
Worthington, Minn.	5/18/48	SRL 4561	Nashville, Tenn.	RI-IHB-C&EI-I&N	24.74
Worthington, Minn.	5/18/48	SRL 1795	Ft. Worth, Tex.	RI-GC&SF	4.35
Chicago, Ill.	5/19/48	SRL 4367	Norfolk, Va.	N&W	334.72
Clay Center, Kansas	5/20/48	SRL 1435	Fort Worth, Tex.	UP-MK&T-GC&SF	24.73
Beatrice, Nebr.	5/20/48	PFE 35477	St. Petersburg, Fla.	UP-MP-L&N-NC&STL-COFGA-ACL	104.40
Lincoln, Nebr.	6/2/48	BREX 75452	New Orleans, La.	CB&Q-IC	31.50
Chicago, Ill.	6/3/48	SRL 8100	Shreveport, La.	IC	30.49
Beatrice, Nebr.	6/7/48	SRL 6176	Philadelphia, Pa.	UP-C&NW-IHB-B&O-WM-Reading	60.30
Detroit Lakes, Minn.	6/9/48	SRL 3580	Cambridge, Mass.	NP-CB&Q-IHB-NYC-B&A	84.96
La Crosse, Wis.	6/21/48	PFE 97984	Chicago, Ill.	OB&Q-CJ	36.12
Marshall, Minn.	6/21/48	SRL 1823	Chicago, Ill.	C&NW-CJ	47.54
Marshall, Minn.	6/21/48	SRL 1259	Newark, N.J.	C&NW-IHB-NKP-LV	151.87
Sauk Center, Minn.	6/22/48	SRL 2691	New York, N.Y.	CSTPM&O-IHB-PM-NYC	103.28
New Rockford, N. Dak.	6/22/48	FGEX 36909	Chicago, Ill.	GN-CB&Q-CJ	60.06
Sauk Center, Minn.	6/22/48	PFE 98302	Fresh Pond, N.Y.	GN-IHB-PRR-LI	173.67
Beatrice, Nebr.	6/25/48	ART 17286	Fort Worth, Tex.	UP-MK&T-GC&SF	13.93
Chicago, Ill.	7/1/48	LMIX 1423	Jersey City, N.J.	PRR	635.39
Montevideo, Minn.	7/12/48	PFE 76042	Philadelphia, Pa.	CMSTP&P-IHB-N&P-LV-Reading	94.72
Worthington, Minn.	7/12/48	SRLX 4189	New Orleans, La.	RI-IHB-IC	298.30
Worthington, Minn.	7/12/48	URTX 4649	Fresh Pond, N.Y.	RI-IHB-PRR-LI	114.84
Worthington, Minn.	7/12/48	GARX 9448	New Orleans, La.	RI-IHB-IC	78.60
Worthington, Minn.	7/12/48	GARX 57878	New Orleans, La.	RI-IHB-IC	58.80
Worthington, Minn.	7/12/48	SRL 4138	Augusta, Me.n	RI-IHB-GTW-MEC	16.36
Hampton, Iowa	7/12/48	SFRD 32604	Clinton, Iowa	M&STL-C&NW	33.91
Waseca, Minn.	7/13/48	WFEX 49611	Philadelphia, Pa.	M&STL-IC-IHB-NKP-W&LE-P&WVA-WM	248.86
Waseca, Minn.	7/13/48	URTX 4734	Flint, Mich.	M&STL-C&NW-IHB-GT	734.09
Waseca, Minn.	7/13/48	URTX 4748	Philadelphia, Pa.	M&STL-C&NW-IC-IHB-NKP-LV-RDG	557.91
Chicago, Ill.	7/14/48	IRR 63032	Jersey City, N.J.	PRR	196.73
Breckenridge, Minn.	7/29/48	ART 20952	Newport News, Va.	GN-CB&Q-IHB-C&O	15.30
Chicago, Ill.	7/30/48	SRL 8128	New York, N.Y.	NYC	311.08
Chicago, Ill.	7/30/48	SRL 7082	New York, N.Y.	NYC	311.04
Hampton, Iowa	7/29/48	FGEX 34298	Clinton, Iowa	CRI&P	33.65

Total number of shipments 234
Total amount of damages $38,612.87
Average amount of claim $165.01

Causes for Freight Loss and Damage

CAUSE "A"—Loss of Entire Package: Loss (not chargeable to Causes "J," "N," "P," or "O"), of an entire package or piece of freight which is billed as to number of pieces or packages and/or is susceptible to being checked.

Loss of package from a car under defective seal or seal record or from freight house or other premises of carrier, is assigned to Theft (Cause "J").

CAUSE "B"—Loss Other than Entire Package: Loss (not chargeable to Causes "F," "K," "L," "N," or "O"), from package or other than package freight.

Wastage and leakage from damaged packages or from tank cars, unless chargeable to Theft (Cause "K"), is classified under the appropriate damage Cause.

CAUSE "C"—Unlocated Damage—Freight in Packages: All damage not otherwise provided for, and applying only to freight in containers (Cause "D" is used for freight not in containers).

CAUSE "D"—Unlocated Damage—Freight Not in Packages: All damage not otherwise provided for, and applying only to freight not in containers.

CAUSE "E"—Improper Handling in Trains, Yards or Stations: Damage definitely due to rough or improper handling, loading, unloading or stowing, in cars, or on floor at warehouse or transfer shed.

CAUSE "F"—Defective or Unfit Equipment: Loss or damage due to leaky or defective car roof, floor, side, end or door, defective hoppers: protruding nails, bolts or hooks; dirty or improperly cleaned equipment. (Delay due to car defects is classified in Cause "I.")

CAUSE "G"—Improper Refrigeration or Ventilation: Damage due to improper icing, improper manipulation of ventilators, failure to ice or over-floor from drip pipes; also damage due to improper refrigeration resulting from delay at or between icing stations (should not be charged to Cause "I").

CAUSE "H"—Freezing or Heater Failure: Damage due to freezing, frosting, chilling, or improper handling of heaters causing smoke and soot damage or overheating, etc., freezing due to improper manipulation of ventilators, delays during severe weather, or other causes resulting in frost damage for which carrier is liable.

CAUSE "I"—Delay: Loss or damage due to delay in movement or delivery of freight; also delay arising from car defects. Damage resulting from Causes "G," "H," and "P" should not be charged to Cause "I"—delay.

CAUSE "J"—Theft of Entire Package: Loss of any commodity which is billed as to number of pieces or packages and/or is susceptible of being checked, when due to known theft, also loss of entire package from car under defective seal or seal record or from freight house or other premises of carrier.

CAUSE "K"—Theft, Other than Entire Package: Loss from a package (not including concealed loss or wastage from damaged package), and theft of other than package freight.

CAUSE "L"—Concealed Loss: Loss from a package discovered after delivery to consignee in apparent good order, without evidence of irregularity in handling by carriers.

CAUSE "M"—Concealed Damage: Damage to freight discovered after delivery to consignee in apparent good order, without evidence of irregularity in handling by carriers.

CAUSE "N"—Train Accidents: Damage due to derailment or collision.

CAUSE "O"—Fire, Marine and Catastrophes: Fire or marine casualty not covered by carrier insurance; also loss or damage resulting from catastrophes such as floods, storms, landslide, etc., not directly chargeable to other standard causes.

CAUSE "P"—Error of Employee: Loss or damage due to error in loading, waybilling, diverting or reconsigning, receipting for or delivery of freight, issuing bill of lading or requiring surrender thereof, or failure to make proper report of freight over, refused or unclaimed, etc.

Source: Freight Claim Division, Association of American Railroads

STATEMENT OF SWIFT & COMPANY DAMAGE CLAIMS FILED WITH RAIL COMMON CARRIERS
ON SHIPMENTS TO NEW YORK, NEW YORK, INCLUDING FRESH POND, N.Y.
FOR PERIOD AUGUST 8, 1947 TO AUGUST 8, 1948

ORIGIN	DATE OF SHIPMENT	CAR No.	DESTINATION	ROUTE	AMOUNT OF CLAIM
Waseca, Minn.	8/14/47	PFE 63778	Fresh Pond, N.Y.	M&STL-IC-IHB-PRR-LI	$ 143.26
Sauk Centre, Minn.	9/22/47	SFRD 21933	New York, N.Y.	GN-CB&Q-IHB-NYC	82.40
Detroit Lakes, Minn.	9/25/47	GARX 9265	Fresh Pond, N.Y.	NP-CB&Q-IHB-PRR-LI	222.28
Waseca, Minn.	10/27/47	URTX 8150	Fresh Pond, N.Y.	MSTL-IC-IHB-PRR-LI	465.39
Iowa Falls, Iowa	12/1/47	SRLX 4238	Fresh Pond, N.Y.	RI-IHB-PRR-LI	274.95
Sauk Centre, Minn.	12/22/47	SFRD 38155	New York, N.Y.	GN-CB&Q-IHB-NYC	47.94
Sauk Centre, Minn.	12/22/47	WFEX 62986	New York, N.Y.	GN-CB&Q-IHB-NYC	38.01
Sauk Centre, Minn.	12/22/47	WFEX 61305	New York, N.Y.	GN-CB&Q-GB&W-AA-Wabash-NYC	32.53
Sauk Centre, Minn.	12/23/47	URTX 81745	New York, N.Y.	GN-CB&Q-IHB-NYC	47.22
Sauk Centre, Minn.	11/23/47	FGEX 50496	New York, N.Y.	GN-CB&Q-NYC	36.72
Sauk Centre, Minn.	12/23/47	WFEX 49428	New York, N.Y.	GN-CB&Q-IHB-NYC	186.38
Sauk Centre, Minn.	12/23/47	SRLX 4932	New York, N.Y.	GN-CB&Q-IHB-NYC	332.98
Sauk Centre, Minn.	12/23/47	SRLX 4298	New York, N.Y.	GN-CB&Q-IHB-NYC	103.93
Chicago, Ill.	1/2/48	SRLX 6386	Fresh Pond, N.Y.	PRR-LI	623.69
Sauk Centre, Minn.	1/22/48	SRLX 4404	New York, N.Y.	GN-CB&Q-IHB-NYC	41.57
Chicago, Ill.	2/6/48	SRLX 8000	Fresh Pond, N.Y.	PRR	360.16
Sauk Centre, Minn.	1/27/48	SRLX 6776	New York, N.Y.	GN-CB&Q-IHB-NYC	101.45
Sauk Centre, Minn.	2/27/48	SRL 43247	New York, N.Y.	GN-CB&Q-IHB-NYC	109.30
Sauk Centre, Minn.	2/27/48	SRL 10091	New York, N.Y.	GN-CB&Q-IHB-NYC	120.31
Chicago, Ill.	3/1/48	GARX 90623	Fresh Pond, N.Y.	PRR-LI	326.57
Chicago, Ill.	3/1/48	SRL 8122	Fresh Pond, N.Y.	PRR-LI	403.71
Worthington, Minn.	3/9/48	GARX 9378	Fresh Pond, N.Y.	RI-IHB-PRR-LI	645.79
Sauk Centre, Minn.	3/25/48	IC 50452	Fresh Pond, N.Y.	GN-CB&Q-IHB-PRR-LI	180.72
Spencer, Iowa	4/20/48	URTX 6112	Fresh Pond, N.Y.	CMSTP&P-IHB-PRR-LI	481.52
Hastings, Nebr.	4/20/48	NWX 1018	New York, N.Y.	CB&Q-IHB-NYC	47.59
Sauk Centre, Minn.	6/22/48	SRLX 2691	New York, N.Y.	CMSTM&O-IHB-PRR-NYC	103.28
Sauk Centre, Minn.	6/22/48	PFE 98302	Fresh Pond, N.Y.	GN-IHB-PRR-LI	173.67
Worthington, Minn.	7/12/48	URTX 4649	Fresh Pond, N.Y.	RI-IHB-PRR-LI	114.84
Chicago, Ill.	7/30/48	SRL 8128	New York, N.Y.	NYC	311.08
Chicago, Ill.	7/30/48	SRL 7082	New York, N.Y.	NYC	311.04

Total Number of Shipments	30
Total Amount in Damages	$6,162.11
Average Amount of Each Claim	$ 205.40

I.C.C. Docket No. 30030
EXHIBIT NO 36
Witness Ford

STATEMENT OF SWIFT & COMPANY DAMAGE CLAIMS FILED WITH RAIL COMMON CARRIERS
FOR PERIOD AUGUST 8, 1947 TO AUGUST 1, 1948

ORIGIN	DATE OF SHIPMENT	CAR NO.	DESTINATION	ROUTE	AMMOUNT OF CLAIM
Clay Center, Kans.	8/8/47	PFE 61499	Savannah, Ga.	UP-MP-GM&O-ACL-C&G	$ 114.75
Marshall, Minn.	8/11/47	SRL 8114	New Orleans, La.	C&NW-LIF-IC	67.20
St. Peter, Minn.	8/13/47	NWX 14761	Chicago, Ill.	CSTPM&O-C&NW-CJ	131.53
Sauk Centre, Minn.	8/13/47	SFRD 32265	Washington, D.C.	GN-CB&Q-IHB-B&O	234.68
Davenport, Iowa	8/13/47	URTX 9269	E. Cambridge, Mass.	CMSTP&P-IHB-NYC-B&A	215.90
La Crosse, Wis.	8/13/47	FGEX 50032	Philadelphia, Pa.	CB&Q-IHB-B&O	84.90
Montevideo, Minn.	8/18/47	URTX 8207	Newark, N.J.	CMSTP&P-IHB-NKP-LV	231.03
Waseca, Minn.	8/14/47	PFE 63778	Fresh Pond, N.Y.	M&STL-IC-IHB-PRR-LI	143.26
Waseca, Minn.	8/14/47	PFE 41692	Washington, D.C.	M&STL-IC-IHB-B&O	39.97
Pittsburg, Pa.	8/14/47	ART 24207	Philadelphia, Pa.	PRR-Reading	22.14
Columbus, Ohio	8/14/47	PFE 43507	Chicago, Ill.	UP-C&NW	75.48
Detroit Lakes, Minn.	8/19/47	SRLX 6765	New London, Conn.	NP-CB&Q-IHB-LV-NYC&W-NYNH	29.98
Montevideo, Minn.	8/26/47	PFE 63266	Chicago, Ill.	CMSTP&P-CJ	67.59
Waseca, Minn.	8/27/47	URTX 4924	Chicago, Ill.	M&STL-IC-CJ	182.98
New Rockford, N.D.	8/27/47	SRLX 6849	Chicago, Ill.	Nor.Pac.-CB&Q-CJ	128.98
Duluth, Minn.	8/27/47	NP 90168	Philadelphia, Pa.	NP-CB&Q	72.02
Columbus, Ohio	8/27/47	PFE 34450	Chicago, Ill.	UP-C&NW-CJ	136.22
Centreville, Iowa	9/4/47	SRL 6820	Chicago, Ill.	CI&Q-CJ	50.23
Montevideo, Minn.	9/3/47	ART 19191	Chicago, Ill.	CMSTP&P-CJ	22.29
Anamosa, Iowa	9/4/47	NWX 84267	Philadelphia, Pa.	CMSTP&P-IHB-B&O-WM-RDG	89.31
Atlantic, Iowa	9/4/47	WFEX 62626	Chicago, Ill.	CRI&P-CJ	64.86
Worthington, Minn.	9/4/47	PFE 37614	Chicago, Ill.	RI-CJ	85.14
Atlantic, Iowa	9/4/47	PFE 76332	Chicago, Ill.	CRI&P-CJ	215.88
Sauk Centre, Minn.	9/4/47	ART 23626	Chicago, Ill.	GN-CB&Q-CJ	41.56
Sauk Centre, Minn.	9/4/47	SRLX 4872	Chicago, Ill.	GN-CB&Q-CJ	189.00
New Rockford, N.D.	9/4/47	FGEX 34699	Chicago, Ill.	GN-CB&Q-CJ	146.70
Sauk Centre, Minn.	9/4/47	NRC 4933	Chicago, Ill.	GN-CB&Q-CJ	34.66
Sauk Centre, Minn.	9/4/47	PFE 64538	New Orleans, La.	GN-M&STL-IC	174.00
Sauk Centre, Minn.	9/4/47	PFE 36934	Miami, Florida	GN-CB&Q-IHB-C&EI-LN-NC&STL-CofG-MD&S-SAL-FEC	250.44
Columbus, Nebr.	9/5/47	PFE 65160	Chicago, Ill.	UP-C&NW-CJ	145.01
Columbus, Nebr.	9/5/47	PFE 65712	Chicago, Ill.	UP-C&NW-CJ	65.65
Detroit Lakes, Minn.	9/10/47	MDT 41524	Baltimore, Md.	NP-CB&Q-IHB-PRR	156.98
Sauk Centre, Minn.	9/22/47	SFRD 21933	New York, N.Y.	GN-CB&Q-IHB-NYC	82.40
Chicago, Ill.	9/22/47	SRLX 8142	Richmond, Va.	C&O	21.61
Algona, Iowa	9/19/47	SFRD 33558	Chicago, Ill.	C&NW-CJ	253.32
Garden City, Kans.	9/19/47	PFE 60106	Atlanta, Ga.	AT&SF-KC-SOU	37.71
Columbus, Nebr.	9/25/47	PFE 52755	Chicago, Ill.	UP-C&NW-CJ	49.85
Detroit Lakes, Minn.	9/25/47	GARX 9265	Fresh Pond, N.Y.	NP-CB&Q-IHB-PRR-LI	222.28
Centreville, Iowa	9/26/47	BREX 75142	Chicago, Ill.	CB&Q-CJ	65.84
Chicago, Ill.	10/8/47	SRLX 5367	Philadelphia, Pa.	B&O-WM-RDG	165.90
Hastings, Nebr.	10/13/47	SRL 4979	Chicago, Ill.	CB&Q	45.33
Melrose, Minn.	10/14/47	MDT 18060	Philadelphia, Pa.	GN-CB&Q-IHB-PRR	20.46
Hubbard, Iowa	10/14/47	NWX 84939	Chicago, Ill.	C&NW	255.33
Calmar, Iowa	10/14/47	MDT 19686	Portland, Me.	CMSTP&P-IHB-GT	10.25

EXHIBIT NO 36
Witness Ford

ORIGIN	DATE OF SHIPMENT	CAR NO.	DESTINATION	ROUTE	AMOUNT OF CLAIM
Algona, Iowa	10/14/47	URTX 81577	Chicago, Ill.	CMSTP&P-CJ	$ 112.03
Hastings, Nebr.	10/23/47	SRLX 6047	Shenandoah, Pa.	CP&Q-IHB-NKP-LV	56.70
Waseca, Minn.	10/27/47	URTX 8150	Fresh Pond, N.Y.	M&STL-IC-IHB-PRR-LI	465.39
Detroit Lakes, Minn.	10/28/47	SRLX 4845	Baltimore, Md.	NP-CB&Q-IHB-PRR	196.10
Iowa Falls, Iowa	10/29/47	PFE 61968	Chicago, Ill.	RI-CJ	61.14
Lancaster, Wis.	10/30/47	WRLX 904	Cincinnati, Ohio	CNW-IHB-PRR-B&O	2,141.32
Montevideo, Minn.	10/30/47	MDT 3008	Chicago, Ill.	CMSTP&P-CJ	84.73
Clay Center, Kans.	10/31/47	PFE 28589	New Orleans, La.	RI-KCS-L&A	88.10
Waseca, Minn.	10/31/47	NHIX 901	Chicago, Ill.	M&STL-IC-CJ	65.67
Sauk Centre, Minn.	10/31/47	FGKX 37750	Chicago, Ill.	GW-CB&Q-CJ	105.47
Breckenridge, Minn.	10/31/47	SRLX 5377	Philadelphia, Pa.	GN-CB&Q-IHB-NKP-W&LE-WM-Reading	31.24
Chicago, Ill.	11/14/47	NRC 10384	Baltimore, Md.	B&O	43.12
Anamosa, Iowa	11/17/47	NWX 85391	Baltimore, Md.	C&NW-IHB-B&O	50.82
Detroit Lakes, Minn.	11/19/47	SRLX 4023	Newark, N.J.	NP-CB&Q-IHB-NKP-LV	406.01
Worthington, Minn.	12/1/47	SRLX 5837	Chicago, Ill.	RI-CJ	266.47
Iowa Falls, Iowa	12/1/47	SRLX 4238	Fresh Pond, N.Y.	RI-IHB-PRR-LI	274.95
Watertown, S. Dak.	12/1/47	SFRD 25095	Chicago, Ill.	C&NW-CJ	41.70
Algona, Iowa	12/4/47	SRLX 3829	Chicago, Ill.	CMSTP&P-CJ	133.39
Clay Center, Kans.	12/5/47	SRLX 3888	Chicago, Ill.	UP-KCS-L&A	233.10
Parsons, Kans.	12/5/47	NRC 7579	Greenville, N.C.	MK&T-C&O-ACL	122.95
Beatrice, Nebr.	12/3/47	SRLX 6437	Miami, Fla.	UP-MP-GM&O-SAL-FEC	442.52
Montevideo, Minn.	12/22/47	SRLX 4548	Philadelphia, Pa.	CMSTP&P-IHB-NKP-W&LE-FWV-WN-Reading	23.70
Sauk Centre, Minn.	12/22/47	SFRD 38155	New York, N.Y.	GN-CB&Q-IHB-NYC	47.94
Sauk Centre, Minn.	12/22/47	WFEX 62986	New York, N.Y.	GN-CB&Q-IHB-NYC	38.01
Sauk Centre, Minn.	12/22/47	WFEX 61305	New York, N.Y.	GN-CB&Q-GB&W-AA-Wabash-NYC	32.53
Sauk Centre, Minn.	12/23/47	URTX 81745	New York, N.Y.	GN-CB&Q-IHB-NYC	47.22
Sauk Centre, Minn.	11/23/47	FGEX 50496	New York, N.Y.	GN-CB&Q-NYC	36.72
Sauk Centre, Minn.	12/23/47	WFEX 49428	New York, N.Y.	GN-CB&Q-IHB-NYC	189.38
Sauk Centre, Minn.	12/23/47	SRLX 4932	New York, N.Y.	GN-CB&Q-IHB-NYC	332.98
Sauk Centre, Minn.	12/23/47	SRLX 4298	New York, N.Y.	GN-CB&Q-IHB-NYC	103.93
Clay Center, Kans.	12/24/47	PFE 46408	New Orleans, La.	NP-SLSF-MFS-IC	36.20
Chicago, Ill.	1/2/48	SRLX 6386	Fresh Pond, N.Y.	PRR-LI	623.69
Iowa Falls, Iowa	1/6/48	SRLX 4055	Philadelphia, Pa.	RI-IHB-B&O-WM	43.60
New Rockford, N. Dak.	1/6/48	SRLX 10410	Atlantic City, N.J.	GN-CB&Q-IHB-NKP-LV-Reading-PRSL	52.00
Blue Island, Ill.	1/12/48	URT-14412	Norfolk, Va.	P/4-N&W	144.12
Sauk Centre, Minn.	1/9/48	SRLX 3797	Sault St. Marie, Mich.	Gr-NOR	41.98
Atlantic, Iowa	1/9/48	SRLX 1839	Chicago, Ill.	CRI&P	23.48
Marshall, Minn.	1/9/48	SRLX 6325	Hartford, Conn.	C&NW-IHB-NKP-DL&W-NYC&W-[illegible]H	143.62
Sauk Centre, Minn.	1/22/48	Not given	Cleveland, Ohio	GN-CB&Q-IHB-NYC-B/4	25.11
Sauk Centre, Minn.	1/22/48	SRLX 1839	Sault St. Marie, Mich.	GN-SOU	9.80
Sauk Centre, Minn.	1/22/48	SRLX 4415	Sault St. Marie, Mich.	GN-SOU	24.00
Sauk Centre, Minn.	1/22/48	SRLX 4404	New York, N.Y.	GN-CB&Q-IHB-NYC	41.57
Detroit Lakes, Minn.	1/23/48	SRLX 4942	Atlantic City, N.J.	NP-CB&Q-IHB-NKP-LV-R&G-PRSL	27.30
Waseca, Minn.	1/23/48	MDT 20136	Port Morris, N.Y.	M&STL-IC-IHB-NYC	411.85
Sauk Centre, Minn.	1/26/48	SRLX 6962	New York, N.Y.	GN-CB&Q-IHB-NYC	99.02
Clay Center, Kans.	1/26/48	SRLX 4607	New Orleans, La.	UP-Frisco-IC	222.55
Clay Center, Kans.	1/26/48	SRLX 6321	New Orleans, La.	UP-Frisco-IC	464.00
Clay Center, Kans.	1/26/48	SRLX 3545	New Orleans, La.	UP-Frisco-IC	66.60
Clay Center, Kans.	1/26/48	SRLX 2726	Cincinnati, Ohio	UP-MP-PRR	124.22

STATEMENT SHOWING NUMBER OF STRAIGHT CARLOAD SHIPMENTS OF SHELL EGGS MADE BY SWIFT & COMPANY DURING THE YEAR 1948 TO EASTERN DESTINATIONS BY EACH ROUTING USED AND SEPARATELY AS TO DESTINATIONS IN THE NEW YORK AREA AND AS TO POINTS OUTSIDE THAT AREA; ALSO SHOWING THE NUMBER AND AMOUNT OF CLAIMS FILED ON ALL CARLOAD SHIPMENTS OF SHELL EGGS (STRAIGHT OR MIXED) TO THE SAME DESTINATIONS DURING THAT SAME PERIOD.

DESTINATIONS USED IN THIS STATEMENT ARE THOSE IN EASTERN TRUNK LINE AND NEW ENGLAND FREIGHT ASSOCIATION TERRITORIES.

TO DESTINATIONS OTHER THAN NEW YORK AND VICINITY				TO NEW YORK AND VICINITY			
ROUTE	NO. OF SHIPMENTS	NO. AND AMOUNT OF CLAIMS		ROUTE	NO. OF SHIPMENTS	NO. AND AMOUNT OF CLAIMS	
B & O	54	13	$1,534.91	Erie	5	1	$ 67.61
B & O - WM - RDG	5	5	210.73	AA - Wab - LV - LI	1		
B & O - RDG - PRSL	11			AA - GT - Erie - (pier delivery)	1		
B & O - RDG	6	1	53.44	NKP - LV	37	3	777.24
B & O - RDG - CRRPa - D&H	1	1	293.24	NKP - LV - LI	19	3	721.91
C & O	48	4	745 28	NKP - LV - NYNH&H (Float)	2		
Erie	1	1	18.80	NKP - DL&W	6		
Erie - NYNH&H	19	3	170.80	NKP - DL&W - LI	1		
Erie - DL&W	1	1	31.37	NYC	131	25	6,376.20
Erie - D&H - JC	1			PRR	1		
Erie - D&H - B&M	2			PRR - LI	79	19	7,630.23
NKP - LV - D&H - B&M	18	3	547.43				
NKP - LV - RDG	6	6	1,092.79				
NKP - LV - D&H	1						
NKP - LV	3	1	25.20				
NKP - LV - NYO&W - NYH&H	5	7	380.68				
NKP - DL&W - D&H - NYNH&H	2						
NKP - DL&W - D&H - B&M	7	1	95.82				
NKP - DL&W - NYO&W - NYNH&H	1						
NKP - DL&W - L&HR - NYNH&H	36	11	3,579.10				
NKP - DL&W - D&H	2						
NKP - DL&W - D&H - B&M	2						
NKP - DL&W	2						
NKP - W&LE - P&WV - WM - RDG	40	10	1,184,95				
NYC	10	4	853.29				
NYC - B&A	16	1	101.52				
NYC - D&H	1						
NYC - Vgn	12						
PRR	105	18	4,988.72				
PRR - N&W	22	10	3,230.02				
PRR - N&W - ACL	18						
PRR - N&W - SAL	2						
PRR - B & O	1						
PRR - D&H - B&M	3						
PRR - NYNH&H	9	3	152.82				
PRR - RDG	7	6	1,156.53				
PM - CP	1						
PM - CP - MeC	3						
PM - CP - B & M	10						
GT	2						
GT - MeC	4	1	16.36				
GT - B&M	1						
Wab - Prr	1						
Wab - DL&W - L&HR - NYNH&H	4						

ORIGIN	DATE OF SHIPMENT	CAR NO.	DESTINATION	ROUTE	AMOUNT OF CLAIM
Beatrice, Nebr.	1/28/48	SRLX 4471	Philadelphia, Pa.	UP-CNW-IHB-NKP-W&LE-P&WV-WM-Reading	$ 374.98
Clay Center, Kans.	1/28/48	PFE 62392	New Orleans, La.	UP-KC-IC	196.20
Chicago, Ill.	1/28/48	MDT 22664	Newark, N.J.	NKP-LV	264.73
Parsons, Kans.	1/28/48	WFEX 49759	Hattiesburg, Miss.	MK&T-IC	30.60
Sauk Centre, Minn.	1/27/48	SRLX 6776	New York, N.Y.	GN-CB&Q-IHB-NYC	1,1.45
Saginaw, Mich.	1/27/48	SRL 6929	Jacksonville, Fla.	NYC-I&N-CoFGA-MDNS-SAL	537.34
Parsons, Kans.	1/27/48	SRLX 3955	Hattiesburg, Miss.	MK&T-I&A-YMV-Southern	32.40
Mason City, Iowa	2/3/48	SRLX-3499	Cleveland, Ohio	MIL-IHB-NYC	27.96
Hastings, Neb.	2/3/48	SRLX 6047	Easton, Pa.	CB&Q-IHB-NKP-LV	42.90
Hastings, Nebr.	2/3/48	SRL 5624	New Orleans, La.	CB&Q-IC	91.30
Chicago, Ill.	2/4/48	SRL 4448	Newark, N.J.	NKP-LV	144.66
Anamosa, Iowa	2/5/48	NWX 84497	Worcester, Mass.	Not Shown	341.54
Worthington, Minn.	2/5/48	SRL 5323	Wilmington, N.C.	RI-IHB-C&EI-NO&STL-CG-ACL	104.48
Montevideo, Minn.	2/5/48	URTX 8547	Baltimore, Md.	CMSTP&P-IHB-PRR	219.75
Chicago, Ill.	2/6/48	SRLX 8000	Fresh Pond, N.Y.	PRR	360.16
Beatrice, Nebr.	2/6/48	SRLX 3672	Miami, Fla.	UP-MP-GM&O-SAL-FEC	254.63
Chicago, Ill.	2/16/48	SRL 8021	Norfolk, Va.	N&W	11.92
Beatrice, Nebr.	2/19/48	PFE 60047	Philadelphia, Pa.	UP-C&NW-IHB-NKP-WLE-PWA-WM-RDG	60.71
Parsons, Kans.	2/18/48	SRLX 15916	Wilmington, Del.	MKT-B&O-WM-RDG	76.91
Sauk Centre, Minn.	2/27/48	SRL 4582	Denver, Colo.	GN-CSTPM&O-UP	1,346.99
New Rockford, N. Dak.	2/27/48	SRL 4553	Jackson, Miss.	GN-CB&Q-IHB-IC	754.32
Sauk Centre, Minn.	2/27/48	SRL 4324	New York, N.Y.	GN-CB&Q-IHB-NYC	109.30
Sauk Centre, Minn.	2/27/48	SRL 10091	New York, N.Y.	GN-CB&Q-IHB-NYC	120.81
Chicago, Ill.	2/27/48	SRL 9218	Norfolk, Va.	Not Shown	39.21
Atlantic, Iowa	2/27/48	SRL 4629	Berlin, N.H.	CRI&P-IHB-PM-CP-B&M-GT	115.05
Chicago, Ill.	3/1/48	SRL 4713	Norfolk, Va.	PRR-N&W	258.49
Chicago, Ill.	3/1/48	GARX 90623	Fresh Pond, N.Y.	PRR-LI	326.57
Chicago, Ill.	3/1/48	SRLX 8122	Fresh Pond, N.Y.	PRR-LI	403.71
Beatrice, Nebr.	3/1/48	PFE 76070	Norfolk, Va.	UP-COB-CMSTP&P-IHB-IC-N&W	9.83
Worthington, Minn.	3/2/48	SRL 5804	Philadelphia, Pa.	C&NW-IHB-PRR	24[illegible].84
Montevideo, Minn.	3/2/48	SRL 4619	Baltimore, Md.	CMSTP&P-IHB-B&O	31.78
Hastings, Nebr.	3/2/48	SRL 4791	Atlanta, Ga.	CB&Q-IHB-C&O-SOU	46.55
Detroit Lakes, Minn.	3/3/48	SRL 4490	New Haven, Conn.	NP-CB&Q-IHB-NKP-LV-NYC&W-NYNH&H	50.55
Chicago, Ill.	3/3/48	SRL 4126	Norfolk, Va.	PRR-N&W	7.92
Hastings, Nebr.	3/4/48	SRL 1543	Jacksonville, Fla.	UP-Wabash-GM&O-SAL	457.60
Worthington, N.Y.	3/9/48	GARX 9378	Fresh Pond, N.Y.	RI-IHB-PRR-LI	645.78
Clay Center, Kans.	3/9/48	SRLX 5028	New Orleans, La.	RI-FCO-IC	120.00
Philadelphia, Pa.	3/22/48	ART 17129	Charleston, S.C.	Reading-R&O-SOU	37.00
Sauk Centre, Minn.	3/25/48	PFE 42294	Chicago, Ill.	GN-CB&Q-CJ	52.43
Sauk Centre, Minn.	3/25/48	IC 50452	Fresh Pond, N.Y.	GN-CB&Q-IHB-PRR-LI	130.72
Worthington, Minn.	3/25/48	SRLX 521	New York, N.Y.	CRI&P-IHB-NYC	959.97
Grinnell, Iowa	3/25/48	SRLX 5469	Williamson, W. Va.	CRI&P-IHB-PRR-N&W	402.[illegible]
Marshall, Minn.	3/25/48	SRLX 4981	Chicago, Ill.	C&NW-CJ	55.[illegible]
Marshall, Minn.	3/25/48	SRLX 3038	Chicago, Ill.	C&NW-CJ	31.07
Grinnell, Iowa	3/25/48	SRLX 3508	Chicago, Ill.	CRI&P-CJ	81.86
Chicago, Ill.	3/26/48	SFRD 25625	Norfolk, Va.	B/4-N&W	684.95
Chicago, Ill.	3/30/48	MDT 146341	Philadelphia, Pa.	NKP-LV-RDG	101.21
Lima, Ohio	3/30/48	SRLX 1690	Narton, Va.	PRR&N&W	21.49

ORIGIN	DATE OF SHIPMENT	CAR NO.	DESTINATION	ROUTE	AMOUNT OF CLAIM
Chicago, Ill.	3/29/48	ARLX 8004	Fresh Pond, N.Y.	PCC-STL-LI	$ 287.71
Chicago, Ill.	3/29/48	GARX 8122	Philadelphia, Pa.	PRR	73.71
Detroit Lakes, Minn.	3/29/48	NRC 13174	Chicago, Ill.	NP-CB&Q-CJ	64.58
Columbus, Nebr.	4/9/48	PFE 95528	Chicago, Ill.	UP-C&NW-CJ	59.36
Chicago, Ill.	4/9/48	SRLX 7065	Norfolk, Va.	PRR-N&W	448.76
Marshall, Minn.	4/8/48	SRLX 10146	Chicago, Ill.	C&NW-CJ	56.18
Sauk Center, Minn.	4/8/48	WFEX 65867	Chicago, Ill.	GN-CB&Q-CJ	36.27
Worthington, Minn.	4/8/48	SRLX 1297	Atlanta, Ga.	RI-IHB-MONON-SOU	31.01
Worthington, Minn.	4/8/48	SRLX 5881	Philadelphia, Pa.	RI-IHB-NKP-W&LE-P&WVA	418.60
Sheboygan, Wis.	4/8/48	ART 17805	Syracuse, N.Y.	C&NW-NYC-DL&W	40.98
Mt. Vernon, Iowa	4/8/48	PFE 91949	Chicago, Ill.	C&NW	23.32
Montevideo, Minn.	4/8/48	BREX 74656	Utica, N.Y.	CMSTP&P-IHB-NYC	44.74
Chicago, Ill.	4/7/48	SRLX 6607	Hartford, Conn.	NKP-LV-NYO&W-NYNH&H	13.18
Parsons, Kans.	4/6/48	URTX 6035	New Orleans, La.	MK&T-IC	24.00
Marshall, Minn.	4/6/48	URTX 81526	Norfolk, Va.	B/4-N&W	19.00
Sauk Centre, Minn.	4/6/48	SRLX 15923	Newport News, Va.	GN-CB&Q-IHB-C&O	38.20
Worthington, Minn.	4/6/48	SRLX 6456	Philadelphia, Pa.	RI-IHB-B&O-Reading	436.30
Chicago, Ill.	4/5/48	PFE 13253	Jackson, Miss.	C&EI-GM&O	365.30
Chicago, Ill.	4/2/48	MRUX 72086	San Francisco, Calif.	MOPAC-D&RG-WP-State Belt	244.78
Worthington, Minn.	4/15/48	PFE 15919	Chicago, Ill.	RI-CJ	57.37
Montevideo, Minn.	4/15/48	NWX 2178	Philadelphia, Pa.	CMSTP&P-IHB-PRR	65.93
Marshall, Ill.	4/15/48	IC 50392	Utica, N.Y.	CB&Q	19.13
Wisner, Minn.	4/12/48	PFE 48058	Chicago, Ill.	M&STL-IC-CJ	319.94
Sauk Centre, Minn.	4/16/48	SRLX 4105	New Orleans, La.	GN-CB&Q-IHB-IC	47.10
Clinton, Iowa	4/26/48	URT 81505	Jersey City, N.J.	RI-IHB-PRR	442.31
Worthington, Minn.	4/26/48	SRLX 6641	Mobile, Ala.	RI-IHB-IC-GM&O	438.61
Worthington, Minn.	4/30/48	NP 94691	New Orleans, La.	RI-IHB-IC	151.20
Iowa Falls, Iowa	4/30/48	GARX 67896	Nashville, Tenn.	RI-IHB-C&EI-I&N	7.50
Chicago, Ill.	4/30/48	FGEX 33705	Norfolk, Va.	C&NW-PRR-N&W	94.14
Watertown, S. Dak.	4/30/48	SRLX 3715	Nashville, Tenn.	C&NW-IHB-C&EI-I&N	14.20
Marshall, Minn.	4/30/48	SRLX 522	New Orleans, La.	C&NW-IHB-IC	567.00
Marshall, Minn.	4/30/48	NRG 14131	Chicago, Ill.	C&NW-CJ	33.02
Chicago, Ill.	4/22/48	SRLX 6817	Providence, R.I.	PM-LV-NYO&W-NYNH&H	398.95
Spencer, Iowa	4/20/48	URTX 6112	Fresh Pond, N.Y.	CMSTP&P-IHB-PRR-LI	481.52
Sisseton, S. Dak.	4/20/48	ART 28389	Chicago, Ill.	CMSTP&P	78.08
Chicago, Ill.	4/20/48	SRL 4276	Nashville, Tenn.	L&N	19.73
Hastings, Nebr.	4/20/48	NWX 1018	New York, N.Y.	CB&Q-IHB-NYC	47.58
Grinnell, Iowa	4/20/48	SRLX 6323	New Orleans, La.	CRI&P-IHB-IC	24.90
Muscatine, Iowa	4/20/48	SRLX 10117	Wilkesbarre, Pa.	RI-IHB-NKP-LV-LWV	30.46
Worthington, Minn.	4/20/48	SRLX 4676	Narton, Va.	RI-IHB-PRR-N&W	107.55
Worthington, Minn.	4/19/48	SRLX W.Va.	Williamson, W. Va.	RI-IHB-PRR-N&W	132.92
Chicago, Ill.	4/19/48	Not shown	Philadelphia, Pa.	PRR	115.93
Kansas City, Kans.	4/19/48	MDT 6244	Jacksonville, Fla.	CofGA-SAL	353.03
Columbus, Nebr.	4/19/48	PFE 65426	Chicago, Ill.	UP-C&NW-CJ	89.38
Morris, Minn.	4/19/48	PFE 66878	Chicago, Ill.	NP-CB&Q-CJ	29.94
Detroit Lakes, Minn.	4/21/48	IC 55087	Chicago, Ill.	NP-CB&Q-CJ	33.51
Beatrice, Nebr.	5/3/48	SRLX 5568	Philadelphia, Pa.	UP-C&NW-IHB-NKP-LV-Reading	56.63
Salina, Kans.	5/3/48	URTX 7414	Nashville, Tenn.	UP-NP-IC-NC&STL	2.92
Kearney, Nebr.	5/3/48	PFE 80146	Nashville, Tenn.	UP-NP-L&N	26.38
Morris, Minn.	5/3/48	MDT 2001	Chicago, Ill.	NP-CB&Q-CJ	71.29
Hampton, Iowa	5/5/48	URTX 4733	Nashville, Tenn.	M&STL-IC-NC&STL	18.36

STATEMENT OF SWIFT & COMPANY SHOWING, FOR THE CALENDAR YEAR 1948, SEPARATED AS TO SHIPMENTS TO NEW YORK AND VICINITY AND AS TO ALL OTHER DESTINATIONS, THE NUMBER OF STRAIGHT CARLOADS OF EGGS SHIPPED AND THE FREIGHT CHARGES PAID ON THOSE SHIPMENTS; ALSO THE NUMBER OF CLAIMS FILED AGAINST ALL EGG SHIPMENTS DURING THE YEAR AND THE AMOUNT THEREOF; THE AVERAGE CLAIM FILED; THE AVERAGE CLAIM PER CAR SHIPPED; THE PERCENT OF CARS DEVELOPING CLAIMS; AND THE PERCENT OF CLAIMS TO FREIGHT CHARGES PAID.

THE FIGURES AS TO CARS SHIPPED AND FREIGHT CHARGES DO NOT INCLUDE FREIGHT CHARGES PAID ON APPROXIMATELY 1,000,000 CASES (EQUIVALENT TO ABOUT 1700 STRAIGHT CARLOADS) OF EGGS SHIPPED IN MIXED CARLOADS WITH DAIRY PRODUCTS AND OTHER COMMODITIES. THE CLAIM FIGURES INCLUDE CLAIMS ON ALL CARS SHIPPED INCLUDING THESE 1,000,000 CASES.

TO DESTINATIONS OTHER THAN NEW YORK CITY AND VICINITY

MONTH	CARS SHIPPED	FREIGHT CHARGES PAID	CLAIMS FILED NUMBER	CLAIMS FILED AMOUNT	AVERAGE CLAIM	AVERAGE CLAIM PER CAR SHIPPED	PERCENT OF CARS DEVELOPING CLAIMS	PERCENT OF CLAIMS TO FREIGHT PAID
JANUARY	123	$ 63,965.60	12	$ 1,677.16	$139.76	$ 13.64		2.6
FEBRUARY	92	44,063.88	13	1,000.93	76.99	10 88	14.1	2.3
MARCH	49	20,546.99	18	806.92	44.83	16.45	36.7	3.9
APRIL	196	66,273.35	31	4,964.21	160.14	25.33	15:8	7.5
MAY	189	100,128.99	22	6,227,07	292.14	32.95	11.6	6.2
JUNE	173	83,735.11	18	6,732.20	374.01	38.91	10.4	8.0
JULY	131	64,804 65	27	7,912.23	293.04	60.39	20.6	12.2
AUGUST	129	60,892.49	21	3,256.45	155.07	25.24	16.3	5.3
SEPTEMBER	116	49,411.26	22	3,367.54	153.07	29.03	18.9	6.8
OCTOBER	171	61,097:85	29	4,514.40	155.67	26.40	16.9	7.4
NOVEMBER	181	72,745.28	24	13,502.81	* 127.62	* 16.92	13.2	* 4.2
DECEMBER	146	79,282.47	8	2,243.87	280 48	15.37	2.5	2.8
TOTALS	1,696	$766.947.92	245	$56,205.79	*$ 186.80	*$26.98	14.4	* 5.9

TO NEW YORK CITY AND VICINITY

JANUARY	10	$ 5,239.38	2	$ 228.30	$ 114.15	$ 22.83	20.0	4.3
FEBRUARY	5	2,656.01	2	1,231.87	615.94	246.37	40.0	46.4
MARCH	23	12,958.42	4	847.43	211.86	36.85	17.4	6.5
APRIL	19	9,996.44	4	1,548.96	387.24	81.52	21.1	15.5
MAY	27	14,557.33	7	2,509,21	358.46	92.93	25.9	17.2
JUNE	34	17,226.30	6	2,118,42	353.07	62.31	17.6	12.3
JULY	28	14,970.10	6	1,945,42	324.24	69.48	21.4	12.9
AUGUST	26	11,517.85	7	1,615.69	230.81	62.14	26.9	14.0
SEPTEMBER	23	9,290:97	2	714.43	357.22	31.06	8.7	7.7
OCTOBER	40	15,935.97	7	1,563.14	223.31	39.08	17.5	9.8
NOVEMBER	27	10,519.35	1	192.12	192.12	6.38	3.7	1.8
DECEMBER	12	5,615.98	3	1,058.20	352.67	88.18	25.0	18.8
TOTALS	274	$130,483.17	51	$15,573.19	$ 305.36	$56.80	18.6	11.9
GRAND TOTAL	1,970	$897,431.09	296	$71,778.98	*$ 207.23	*$31.13	15.0	* 7.0

* Does not include $10,440.00 loss on one car, which was wrecked.

EXHIBIT NO 37.
Witness Ford

[fol. 133]

EXHIBIT No. 38

Witness: Wells

Before The Interstate Commerce Commission

I. C. C. Docket 30030

Special Regulations—Eggs.

Study of all carload shipments of eggs made by Armour and Company, at its Branch Houses in States of New York, Pennsylvania, New Jersey, Delaware, Maryland (including District of Columbia) and in New England States, during period 1/1/48 to 10/1/49.

[fol. 134]

Statement of Carload Shipments of Eggs Received by Armour Branch Houses in Eastern Territories Except Houses at Boston, Mass., New York, N. Y., Baltimore, Md., Washington, D. C., Philadelphia, Pa. and Pittsburgh, Pa.

	1948			1949 (9 mos.)		
	Cars Rec'd	Cars Damaged	Total Claims	Cars Rec'd	Cars Damaged	Total Claims
Albany, N. Y.	9	7	$323.00	5	1	$ 67.00
Altoona, Pa.	5	3	380.00	—	—	—
Amsterdam, N. Y.	4	0	—	1	0	—
Bangor, Me.	1	0	—	2	1	277.00
Batavia, N. Y.	1	0	—	—	—	—
Biddeford, Me.	1	1	119.90	1	0	—
Buffalo, N. Y.	13	3	373.00	2	1	32.00
Elizabeth, N. J.	1	1	377.71	—	—	—
Erie, Pa. (a)	7	2	962.03	—	—	—
Faust, N. Y.	1	1	33.82	—	—	—
Gardiner, Me.	—	—	—	1	0	—
Geneva, N. Y.	1	1	124.32	—	—	—
Glens Falls, N. Y.	1	1	26.71	—	—	—
Greensburg, Pa.	6	1	216.00	—	—	—
Hartford, Conn.	5	0	—	—	—	—
Jersey City, N. J.	—	—	—	1	0	—
Johnstown, Pa.	11	3	415.34	3	2	202.59
Kingston, N. Y.	4	0	—	3	0	—
Lewiston, Me.	1	0	—	3	1	18.00
Middletown, N. Y.	3	0	—	1	0	—
Mt. Vernon, N. Y.	1	0	—	1	0	—
Newark, N. J.	5	3	1,063.00	2	0	—
Newburgh, N. Y.	4	2	271.00	3	0	—
New Bedford, Mass.	1	1	101.00	—	—	—
New Haven, Conn.	7	1	24.80	2	0	—
North Adams, Mass.	1	1	39.77	—	—	—
Paterson, N. J.	2	0	—	—	—	—
Portland, Me.	2	0	—	—	—	—
Poughkeepsie, N. Y.	2	1	106.53	1	0	—
Providence, R. I.	13	3	256.00	8	5	389.00
Scranton, Pa.	2	0	—	—	—	—
Springfield, Mass.	8	2	186.41	1	0	—
Stamford, Conn.	5	0	—	1	1	582.00
Syracuse, N. Y.	1	0	—	—	—	—
Troy, N. Y.	—	—	—	2	0	—
Rochester, N. Y.	3	0	—	—	—	—
Uniontown, Pa.	3	0	—	—	—	—
Utica, N. Y.	1	1	202.71	1	0	—
Warren, Pa.	4	1	139.56	—	—	—
Waterbury, Conn.	4	1	19.20	—	—	—
Wilkes Barre, Pa.	9	3	362.36	7	1	87.81
Wilmington, Del.	5	0	—	2	0	—
Worcester, Mass.	4	1	366.00	—	—	—
Yonkers, N. Y.	1	0	—	—	—	—
	163	45	$6,490.17	54	13	$1,655.40
Percent of Cars Damaged			27.6%			24.074%
Average Claim Per Car Rec'd			$39.81			$30.66
Average Claim Per Car Damaged			$144.23			$127.34

(a) Excludes $277.20 freight to rehandling point.

[fol. 135]

Statement of Claims Filed in Eastern Metropolitan Areas Other Than New York, New York.

	1948			1949 (9 mos.)		
Station	Cars Rec'd	Cars Damaged	Total Claims	Cars Rec'd	Cars Damaged	Total Claims
Baltimore, Md.	26	8	$1,666.36	9	4	$ 476.93
Boston, Mass.	15	4	294.00	12	7	394.00
Philadelphia, Pa.	9	4	597.51	8	3	281.56
Pittsburgh, Pa.	21	5	399.87	2	1	29.19
Washington, D. C.	14(a)	1(a)	2,133.00	2	0	—
Total (a)	85	22	$5,090.74			
(b)	84	21	$2,857.00	33	15	$1,181.68
% Cars Damaged (a)		25.8%				
(b)		25%			45.4%	
Damage Per Car Rec'd (a)		$59.89				
(b)		$34.01			$35.81	
Damage Per Car Damaged (a)		$231.39				
(b)		$136.05			$78.78	

Statement of Cars Received at New York, Not Floated

3 Manhattan Branches	(a)	6	1	(a)$1,015.86	3	1	$ 69.00
	(b)	5	0	—	3	1	69.00

Statement of Cars Received at New York, Floated

Brooklyn	4	3	$1,470.00	8	5	$1,968.00
Team Track	20	14	3,309.00	25	13	3,854.00
Pier 20	25	7	1,618.00	—	—	—
	49	24	$6,397.00	33	18	$5,822.00
% Cars Damaged		48.9%			54.5%	
Damage Per Car Rec'd		$130.55			$176.42	
Damage Per Car Damaged		$266.54			$323.44	

(a) Including Wrecked Car.
(b) Excluding Wrecked Car.

[fol. 136]

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Add to Previous Page 1

Station	1948 Cars Rec'd	1948 Cars Damaged	1948 Total Claims	1949 (9 mos.) Cars Rec'd	1949 (9 mos.) Cars Damaged	1949 (9 mos.) Total Claims
Amsterdam, N. Y.	—	1	$ 35.00	—	—	——
Scranton, Pa.	6	2	24.00	2	0	——
Troy, N. Y.	4	3	152.00	1	0	——
Totals, Previous	163	45	6,490.17	54	13	$1,655.40
Total	173	51	$6,701.17	57	13	$1,655.40
% Cars Damaged		29.5%			22.8%	
Damage per car Rec'd		$38.74			$29.04	
Damage Per Car Damaged		$131.40			$127.34	

Add to Previous Page 2

Receipts at Metropolitan Areas Other Than New York, N. Y.

Baltimore	15	1	$159.66	2	0	——
Previous Totals (a)	85	22	5,090.74	—	—	——
(b)	84	21	2,857.00	33	15	$1,181.68
New Totals (a)	100	23	$5,250.40	—	—	——
(b)	99	22	$3,016.66	35	15	$1,181.68
% Cars Damaged (a)		23.4%				
(b)		22.2%			42.8%	
Damage Per Car Rec'd (a)		$52.50				
(b)		$30.47			$33.76	
Damage Per Car Damaged (a)		$228.48				
(b)		$137.12			$78.78	

Receipts at New York Floated

Brooklyn	4	2	$ 539.00	2	1	$ 324.00
Previous Total	49	24	6,397.00	33	18	5,822.00
New Totals	53	26	$6,936.00	35	19	$6,146.00
% Cars Damaged		49.1%			54.3%	
Damage per car Rec'd		$130.87			$175.60	
Damage per car Damaged		$266.77			$323.47	

(a) Including Wrecked Car.
(b) Excluding Wrecked Car.

[fol. 137]

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Summary

	Total Cars	% Cars Damaged	Damage Received	Per Car Damaged
1948				
Non-Metropolitan Areas	173	29.5%	$38.74	$131.40
Metropolitan Areas Except N. Y. (a)	100	23.4%	52.50	228.48
(b)		22.2%	$30.47	$127.12
New York Area, Not Floated				
Basis (a)	6	16.7%	$169.31	$1,015.86
(b)	—	—	0	0
New York, Floated	53	49.1%	$130.87	$ 266.77
Total	332			
1949				
Non-Metroplitan Areas	51	22.8%	$29.01	$127.34
Metropolitan Areas Except N. Y.	35	42.8%	$33.76	$ 78.78
New York Area, Not Floated	3	33.3%	$23.00	$ 69.00
New York Area, Floated	35	54.3%	$175.60	$323.47
	124			

(a) Including Wrecked Cars.
(b) Excluding Wrecked Cars.

[fol. 138]

ICC Docket No. 30030

EXHIBIT No. 39

Witness: W. F. Streving

Statement on Shell Eggs Received
at San Francisco, California Quartermaster Market Center
and inspected by the Veterinary Corps Inspector at destination
showing reported damage and rejections and other detail as indicated
for the period December 1948 through May 1949

	*Rail Shipments			**Truck Shipments		
Month and Year	Total Shipments received (Rail) C/L	Total cases in shipments	Cases reported damaged-rejected	Total shipments rec'd (Truck) T/L	Total cases in shipments	Cases reported damaged-rejected
December 1948	54	30909	3	28	15857	15
January 1949	56	32633	3	7	3952	..
February 1949	71	42468	12	17	10073	45
March 1949	44	25874	6	80	46480	99
April 1949	30	17793	7	91	53236	259
May 1949	10	6000	..	56	32755	235
	265	155677	31	279	162353	653

* Percentage of Damage and Loss
for period indicated
31 cases + 155677 = .000199%

** Percentage of Damage and Loss
for period indicated
653 Cases + 162353 = .00402%

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Year	Via Rail	Percent	Via Truck	Percent	Total	Index 1939 = 100
			At New York City, N.Y.			
1949	1,376,058	27	3,715,645	73	5,091,703	80
			At Chicago, Illinois			
1949	408,473	12	3,041,205	88	3,449,678	68
			At Philadelphia, Pennsylvania			
1949	163,004	14	999,275	86	1,162,279	101
			At Boston, Massachusetts			
1949	203,679	16	1,104,392	84	1,308,071	116

Total Receipts at Four 1/ Markets

Year	Via Rail	Percent	Index	Via Truck	Percent	Index	Via Rail and Truck	Index
1949	2,151,214	20	26	8,860,517	80	163	11,011,731	80

1/ New York, N.Y.; Chicago, Ill.; Philadelphia, Pa.; and Boston, Mass.

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Year	Via Rail	Percent	Via Truck	Percent	Total	Index 1939 = 100
			At San Francisco, California			
1949	151,925	14	933,295	86	1,085,222	125
			At Los Angeles, California			
1949	127,547	10	1,158,420	90	1,285,967	123
			At Baltimore, Maryland			
1949	189,124	60	127,251	40	316,375	66
			At Atlanta, Georgia			Index 1947 = 100
1949	44,391	8	504,292	92	548,683	112
			At Cincinnati, Ohio			
1949	3,465	1	510,558	99	514,023	90
			At Detroit, Michigan			
1949	35,647	3	1,217,907	97	1,253,554	114
			At New Orleans, Louisiana			
1949	33,998	9	360,263	91	394,261	94

State of Origin	Year	Destination Markets: New York, N.Y.	Percent	Chicago, Ill.	Percent	Philadelphia, Pa.	Percent	Boston, Mass.	Percent	San Francisco, Calif.	Percent	Los Angeles, Calif.	Percent	Baltimore, Md.	Percent	Number of Reporting Markets Showing Receipts
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(25)
Alabama	1949	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3
Arizona	1949	—	—	—	—	—	—	—	—	—	—	—	—	—	—	2
Arkansas	1949	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3
California	1949	406	0.01	—	—	—	—	—	—	891,427	82.14	687,830	53.49	—	—	3
Colorado	1949	—	—	14,281	0.41	—	—	—	—	—	—	17,693	1.38	—	—	2
Connecticut	1949	20,734	.41	—	—	—	—	50,661	3.87	—	—	—	—	—	—	3
Delaware	1949	5,679	.11	—	—	10,483	0.90	—	—	—	—	—	—	291	0.09	3
Florida	1949	480	.01	—	—	—	—	—	—	—	—	—	—	—	—	4
Georgia	1949	—	—	22	—	—	—	—	—	—	—	—	—	—	—	11
Idaho	1949	6,376	.13	—	—	—	—	—	—	3,520	.32	22,609	1.76	—	—	8
Illinois	1949	81,207	1.60	395,013	11.45	133,459	11.48	56,324	4.31	1,725	.16	1,080	.08	33,082	10.46	
Indiana	1949	140,514	2.76	12,849	.37	10,435	.90	3,355	.27	—	—	—	—	—	—	
Iowa	1949	1,388,275	27.27	817,966	23.71	147,152	12.66	204,306	15.62	50,391	4.64	41,582	3.23	87,091	27.53	11
Kansas	1949	6,407	.13	4,684	.14	—	—	17,841	1.36	12,870	1.19	59,181	4.60	—	—	8
Kentucky	1949	479	.01	179	.01	688	.06	15	—	—	—	—	—	—	—	8
Louisiana	1949	—	—	—	—	—	—	—	—	—	—	—	—	—	—	2
Maine	1949	—	—	—	—	—	—	214,720	16.42	—	—	—	—	—	—	1
Maryland	1949	43,136	.85	28	—	50,397	4.34	—	—	—	—	—	—	31,809	10.06	5
Massachusetts	1949	22,556	.44	—	—	—	—	304,082	23.25	—	—	—	—	—	—	3
Michigan	1949	11,220	.28	4,798	.14	960	.08	—	—	—	—	—	—	—	—	6
Minnesota	1949	696,864	13.69	760,646	22.05	210,848	18.14	40,108	3.07	69,745	6.43	61,275	4.76	121,805	38.50	11
Mississippi	1949	—	—	—	—	—	—	—	—	—	—	480	.04	—	—	4
Missouri	1949	20,346	.40	13,749	.40	2,604	.22	84	.01	1,560	.14	600	.05	858	.27	10
Montana	1949	—	—	—	—	—	—	—	—	150	.01	14,077	1.09	—	—	2
Nebraska	1949	13,094	.26	11,176	.32	11,207	.96	15,435	1.18	36,508	3.36	53,935	4.19	3,008	.95	11
Nevada	1949	—	—	—	—	—	—	—	—	—	—	—	—	—	—	3
New Hampshire	1949	1,987	.04	—	—	—	—	242,603	18.55	—	—	—	—	—	—	5
New Jersey	1949	535,177	10.51	—	—	40,615	3.49	600	.05	—	—	—	—	—	—	8
New Mexico	1949	—	—	—	—	—	—	—	—	—	—	—	—	—	—	5
New York	1949	1,022,135	20.07	1	—	3,635	.31	50,072	3.83	—	—	—	—	630	.20	9
North Carolina	1949	842	.02	—	—	5,651	.49	—	—	—	—	—	—	—	—	7
North Dakota	1949	5,562	.11	6,515	.19	1,066	.09	3,280	.25	3,880	.36	2,456	.19	960	.30	5
Ohio	1949	98,889	1.94	501	.01	37,525	3.23	5,734	.44	—	—	—	—	1,554	.49	2
Oklahoma	1949	—	—	179	.01	—	—	—	—	200	.02	8,966	.69	—	—	6
Oregon	1949	—	—	—	—	—	—	—	—	2,573	.24	400	.03	—	—	
Pennsylvania	1949	869,925	17.09	—	—	458,028	39.41	271	.02	—	—	—	—	8,251	2.61	
Rhode Island	1949	[illegible]	.06	—	—	—	—	8,756	.67	—	—	—	—	—	—	3
South Carolina	1949	—	—	—	—	2	—	—	—	—	—	—	—	—	—	5
South Dakota	1949	11,420	.22	24,604	.71	24,224	2.08	—	—	3,296	.30	3,480	.27	896	.28	9
Tennessee	1949	13,843	.27	510	.01	244	.02	4,055	.31	—	—	—	—	—	—	8
Texas	1949	1,281	.03	—	—	—	—	—	—	—	—	214	.02	—	—	5
Utah	1949	29,992	.59	—	—	—	—	—	—	5,524	.51	309,729	24.09	—	—	4
Vermont	1949	4,169	.08	—	—	—	—	68,336	5.22	—	—	—	—	—	—	3
Virginia	1949	4,156	.08	—	—	7,640	.66	—	—	—	—	—	—	5,384	1.70	5
Washington	1949	—	—	—	—	—	—	—	—	391	.04	480	.04	—	—	2
West Virginia	1949	261	.01	—	—	1,402	.12	—	—	—	—	—	—	8,570	2.71	5
Wisconsin	1949	19,991	.39	1,378,558	39.96	3,984	.34	10,475	.80	1,460	.13	—	—	12,186	3.85	10
Wyoming	1949	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
District of Columbia	1949	2,039	.04	—	—	30	—	3,744	.29	—	—	—	—	—	—	2
Canada	1949	2,141	.04	432	.01	—	—	—	—	—	—	—	—	—	—	4
Parcel Post	1949	3,300	.06	2,987	.09	—	—	3,214	.25	—	—	—	—	—	—	3
Total	1949	5/ 5,091,703	100.00	6/3,449,678	100.00	1,162,279	100.00	7/1,308,071	100.00	1,085,220	100.00	1,285,967	100.00	316,375	100.00	11
		1949		5/ 34		6/ 20		22		7/ 22		16		18		15

Summary of the Number of States (Excluding the District of Columbia and Parcel Post) Shipping Eggs to the Above Markets

	1949	22		16		18		15		26		15		8/ 31		20

5/ Includes 2,141 cases of eggs from Canada (0.04 percent).
6/ " 432 " " " " (0.01 ").
7/ " 3,744 " " " " (0.29 ").
8/ " 8,444 " " " " (0.68 ").

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Line	Year	A Unallocated Loss: Entire package (Dollars) (2)	Index 1939=100 (3)	Other than entire package (Dollars) (4)	Index 1939=100 (5)	C Unallocated Damage: Freight in packages (Dollars) (6)	Index 1939=100 (7)	Freight not in packages (Dollars) (8)	Index 1939=100 (9)	L Concealed: Loss (Dollars) (10)	Index 1939=100 (11)	M Concealed: Damage (Dollars) (12)	Index 1939=100 (13)	Total A, B, C, D, L, and M (Dollars) (14)	Index 1939=100 (15)
	(1)														
		All Freight (Carload and Less Than Carload Combined)													
10A	1949	6,502,940	1029	5,709,037	931	47,430,287	682	13,720,972	407	222,833	412	13,004,398	420	86,590,467	588
		Eggs, in Shell (Carload and Less Than Carload Combined)													
21	1949	5,957	510	—	—	1,191,659	1138	—	—	—	—	2,328	186	1,199,944	1108

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Line	Year	E Improper handling in trains, yards, or stations (Dollars) (2)	Index 1939=100 (3)	F Defective or unfit equipment (Dollars) (4)	Index 1939=100 (5)	G Temperature Failures: Improper refrigeration or ventilation (Dollars) (6)	Index 1939=100 (7)	H Temperature Failures: Freezing or heater failure (Dollars) (8)	Index 1939=100 (9)	I Theft: Delay (Dollars) (10)	Index 1939=100 (11)	J Theft: Entire package (Dollars) (12)	Index 1939=100 (13)	K Theft: Other than entire package (Dollars) (14)	Index 1939=100 (15)
	(1)														
		All Freight (Carload and Less Than Carload Combined)													
10A	1949	3,526,251	505	5,750,687	586	1,038,456	770	1,344,783	459	7,116,431	1363	1,046,335	442	754,533	441
		Eggs, in Shell (Carload and Less Than Carload Combined)													
21	1949	32,909	865	4,238	407	35,359	6879	31,822	4414	30,655	306	3,743	288	2	

Line	Year	Total E, F, G, H, I, J, K, and P (Dollars) (22)	Index 1939=100 (23)
	(1)		
		All Freight (Carload and Less Than Carload Combined)	
10A	1949	27,253,791	655
		Eggs, in Shell (Carload and Less Than Carload Combined)	
21	1949	171,856	472

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Line	Year	A Unallocated Loss: Entire package (Dollars) (2)	Index 1939=100 (3)	Other than entire package (Dollars) (4)	Index 1939=100 (5)	C Unallocated Damage: Freight in packages (Dollars) (6)	Index 1939=100 (7)	Freight not in packages (Dollars) (8)	Index 1939=100 (9)	L Concealed: Loss (Dollars) (10)	Index 1939=100 (11)	M Concealed: Damage (Dollars) (12)	Index 1939=100 (13)	Total A, B, C, D, L, and M (Dollars) (14)	Index 1939=100 (15)
	(1)														
		All Freight (Carload)													
10A	1949	2,358,935	917	5,304,144	950	38,590,639	691	12,741,521	411	138,343	1181	4,253,009	532	63,386,591	615
		Eggs, in Shell (Carload)													
21	1949	5,504	541	—	—	1,183,236	1153	—	—	—	—	1,827	182	1,190,567	1128

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Line	Year	E Improper handling in trains, yards, or stations (Dollars) (2)	Index 1939=100 (3)	F Defective or unfit equipment (Dollars) (4)	Index 1939=100 (5)	G Temperature Failures: Improper refrigeration or ventilation (Dollars) (6)	Index 1939=100 (7)	H Temperature Failures: Freezing or heater failure (Dollars) (8)	Index 1939=100 (9)	I Theft: Delay (Dollars) (10)	Index 1939=100 (11)	J Theft: Entire package (Dollars) (12)	Index 1939=100 (13)	K Theft: Other than entire package (Dollars) (14)	Index 1939=100 (15)
	(1)														
		All Freight (Carload)													
10A	1949	3,085,020	504	5,687,498	594	1,025,988	793	1,316,116	461	7,030,402	1385	565,213	533	301,144	229
		Eggs, in Shell (Carload)													
21	1949	32,282	939	4,238	429	35,359	7016	31,822	5496	30,573	299	3,743	293	2	

Line	Year	N Train accidents (Dollars) (16)	Index 1939=100 (17)	O Fire, Marine and catastrophes (Dollars) (18)	Index 1939=100 (19)	P Error of employee (Dollars) (20)	Index 1939=100 (21)	Total E, F, G, H, I, J, K, N, O, and P (Dollars) (22)	Index 1939=100 (23)
	(1)								
		All Freight (Carload)							
10A	1949	4,689,401	632	724,756	676	778,800	499	25,204,338	675
		Eggs, in Shell (Carload)							
21	1949	30,345	266	1,763	—	1,020	14	171,147	480

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Year (1)	Grand total carload claim payments (Dollars) (2)	Total causes A, B, C, D, L, and M claim payments (Dollars) (3)	Percentage of grand total (Col. 2) (4)	Index (5)	Total causes E, F, G, H, I, J, K, N, O, and P claim payments (Dollars) (6)	Percentage of grand total (Col. 2) (7)	Index (8)
			All Freight				
1949	88,590,929	63,386,591	71.55	97	25,204,338	28.45	107
			Eggs, in Shell				
1949	1,361,714	1,190,567	87.43	117	171,147	12.57	50

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Year (1)	Tons originated 1/ (2)	Average tons loaded per car originated 2/ (3)	Loss and damage claim payments carload shell egg traffic 3/ (4)	Cause "E" applied to carload shell egg traffic 4/ (5)	Cause "C" applied to carload shell egg traffic 5/ (6)
1949	39	118	964	939	1153

Supplementary - Page 53

Year (1)	Carloads originated (2)	Cars required if normally loaded at 11.42 tons per car (3)	Refrigerator cars saved (4)	Average (3) round trip per car (Miles) (5)	Rate per mile (Cents) (6)	Savings resulting from heavier ODT loading order (E) (Dollars) (7)
1949	9,037	10,683	1,646	2,200	3.0	108,636

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Year (1)	Average number of tons loaded per car originated (2)	Index (3)	Average number of cars per freight train length, excluding caboose (4)	Index (5)	Average freight train load (in tons) (6)	Index (7)	Average speed of freight trains (miles per hour) (8)	Index (9)	Ratio total traffic to egg traffic (carloads) 1/ (10)	Index (11)	Approximate average length of haul per case 2/ (12)	Index 2/ (13)
1949	40.56	110	56.8	117	1,138	140	16.9	101	3,312	380	1,108	81

EXHIBIT NO 43
Witness Henry D. Greene

(P. 1184)

SHELL EGGS

1949 Receipts

From	Received at San Francisco (cases)	Received at Los Angeles (cases)
Arkansas		
California	891,427	687,830
Colorado		17,693
Idaho	3,520	22,609
Illinois	1,725	1,080
Iowa	50,391	41,582
Kansas	12,870	59,181
Kentucky		
Maryland		
Minnesota	69,745	61,275
Mississippi		480
Missouri	1,560	600
Montana	150	14,077
Nebraska	36,508	53,935
North Dakota	3,880	2,456
Oklahoma	200	8,866
Oregon	2,573	400
South Dakota	3,296	3,480
Texas		214
Utah	5,524	309,729
Washington	391	480
Wisconsin	1,460	
Canada		
TOTAL 1949	1,085,220	1,285,967

1,285,967
1,085,220
2,371,187

Total receipts at Portland, Oregon 1949 (cases) 285,939
(no data on states of origin) 2,657,126

Source: USDA, PMA, Market News Service

Before I.C.C. Docket No. 30030 Page 1

(p. 1190)

Utah Poultry & Farmers Cooperative

C Line	(1) Car No.	(2) Rail Origin	(3) Date 1950	(4) No. of Cases	(5) No. of Dozens in Car	(6) Destination	(7) Inspection Date	(8) R.P.I.A Inspection Report - General Condition of Load	(9) No. of Dozens Broken	(10) % of Doz. Broken to Total Doz.	(11) % Doz. Broken to Doz in B/O cs.
1	PFE 46642	Preston Idaho	6/16/50	640	19,200	New York City	6/26/59	Straw buffing. 7th stack "B" end shows upper cases overlapping lower cases up to 3 inches in direction of "A" end. "A" end 1st stack jammed against bunker wall. Ends of cases pushed in, bottoms wet due to leakage & matted to lower cases. 40 cases externally damaged in this one stack. 268 cases concealed damage. 308 cases contained 9,240 dozen	97	0.51	1.0
2	PFE 65680	Preston Idaho	6/ 1/50	637	19,110	New York City	6/12/50	Straw buffing. "B" end cases jammed tight against bunker wall. "A" end top layer shifted 3½ inches from bunker wall. "B" end damage 37 cases. 287 cases concealed damage. 324 cases contained 9,720 dozen.	113	0.60	1.2
3	PFE 47890	Salt Lake City Utah	6/7/50	640	19,200	New York City	6/16/50	Straw buffing. "B" end shows space between bunker wall & cases. Straw buffing between wall and cases slipped down to lower layers. "A" end shows cases jammed against wall. 222 cases concealed damage. Cases ends pushed in up to 4 inches. 19 cases externally damaged. 241 cases contained 7,230 dozen	54	0.28	0.8
4	PFE 47281	Salt Lake City Utah	6/ 5/50	640	19,200	New York City	6/15/50	Straw buffing. "A" end car shows top layer cases and panels pressed in up to 2 inches. 280 cases concealed damage. cases in layers overlap. "B" end cases jammed against bunker wall. 64 cases showed external damage. 344 cases contained 10,320 dozen	143	0.74	1.4
5	PFE 67385	Springville Utah	6/ 3/50	624	18,720	New York City	6/14/50	Straw buffing. "A" end car shows top layer jammed against bunker wall. End panels pressed in & cases bulged. Layers shift toward "A" end. 213 cases concealed damage. "B" end cases moved up to 2 inches from bunker wall. 26 cases which show external damage inspected. 239 cases contained 7,170 dozen.	62	0.34	0.9

EXHIBIT NO 45
Witness McDonough

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(P. 1191)

Col. Line	(1) Car No.	(2) Rail Origin	(3) Date 1950	(4) No of Cases	(5) No. of Dozens in Car	(6) Destination	(7) Inspection Date	(8) R.P.I.A. Inspection Report - - General Condition of Load	(9) No. of Dozens Broken	(10) % of Doz. Broken to Total Doz.	(11) % Doz. Broken to Doz. in B/O cs.
1	ART 23308	Springville Utah	6/ 1/50	640	19,200	New York City	6/12/50	Straw buffing. "A" end 1st stack jammed tight against bunker wall. End panels pressed in. "B" end cases away from wall up to 2½ inches at top layer. 23 cases show external damage. 306 cases concealed damage. 329 cases contained 9,870 dozen.	70	0.36	0.7
2	PFE 46850	Preston Idaho	5/29/50	640	19,200	New York City	6/ 8/50	Straw buffing. 268 cases concealed damage. Doorway cases show some stress. 8 cases bulged. "A" end 16 top layer cases ends pressed in, bottoms wet & leaking - cases jammed against bunker wall, "B" end up to 3 inches from bunker wall. Ends jammed in, wet & matted to lids of lower layers. 23 cases damaged externally. 291 cases contained 8,730 dozen.	94	0.94	1.1
3	ART 27046	Springville Utah	5/27/50	640	19,200	New York City	6/ 5/50	Straw buffing. Cases on top layers show shifting from "B" end to "A" end & sideways toward door 2 to 3 inches. 32 cases damaged - cases bulged, creased & end panel pressed in. 296 cases concealed damage. 328 cases contained 9,840 dozen.	126	0.66	1.3
4	PFE 4828	American Fork Utah	5/26/50	640	19,200	New York City	6/ 5/50	Straw buffing. Cases on top layers show shifting from "B" to "A" end. "A" end cases jammed tight against bunker wall. 241 cases concealed damage. "B" end has space between cases & wall up to 2½ inches. 16 cases damaged. 257 cases contained 7,710 dozen.	103	0.54	1.4
5	ART 27176	Springville Utah	5/26/50	640	19,200	New York City	6/ 1/50	Straw buffing. Top layer cases in door show cases bulged - some shift toward "B" end of car. 252 cases concealed damage. Top cases overlapping bottom cases 2½ inches. "B" end top layer cases jammed against bunker wall. End panels pushed in, bottoms wet and leaking. "A" end cases away from bunker wall up to 3 inches 18 cases externally damaged. 270 cases contained 8,100 dozen.	107	0.56	1.3

(P.1192)

Line	(1) Car No.	(2) Rail Origin	(3) Date 1950	(4) No. of Cases	(5) No. of Dozens in Car	(6) Destination	(7) Inspection Date	(8) R P I A Inspection Report -- General Condition of Load	(9) No. of Dozens Broken	(10) % of Doz. Broken to Total Doz.	(11) % Doz. Broken to Doz. in B/O cs.
1	PFE 6846 * TEST LOAD	Salt Lake City Utah	5/25/50	640	19,200	New York City	5/31/50	Excelsior Pads. Bunker walls & doorway. Doorway cases show ½ to 2 inches overlapping towards unloading door. Both ends of car show imprint of cases being compressed against pads. 264 cases concealed damage. "A" end & "B" end cases against bunker walls show top layer cases with ends pushed in, wet & leaking. 21 cases externally damaged. 285 cases contained 8,500 dozen.	129	0.67	1.5
2	PFE 66776	Preston Idaho	5/23/50	640	19,200	New York City	5/31/50	Straw buffing. Doorway cases show some bulging. "A" end of car shifted towards "B" end. 261 cases concealed damage. "B" end jammed tight to bunker wall. 32 cases damaged due to shifting. 293 cases contained 8,990 dozen.	112	0.58	1.3
3	PFE 64833 * TEST LOAD	Salt Lake City Utah	5/22/50	640	19,200	Detroit Michigan	5/29/50	Excelsior pads. "A" end cases away from wall 1 inch second layer to 6 inches top layer. "B" end 3 cases slightly pushed in on ends. 1 case punctured. 1 egg broken	-0-	-0-	-0-
4	PFE 5134	Preston Idaho	5/16/50	640	19,200	New York City	5/23/50	Straw buffing. Verticle alignment good at doorway. "B" end cases wet & leaking from pressure against bunker wal - end panels pushed in. "A" end cases out 2 to 3 inches irregularly from bunker wall. 11 cases damaged externally. 235 cases concealed damage. 246 cases contained 7,380 dozen.	98	0.51	1.3
5	PFE 48238	Preston Idaho	5/12/50	640	19,200	New York City	5/19/50	Straw buffing Few cases show covers bulged & cases creased. 270 cases concealed damage. "B" end cases away from wall up to 2 inches. "A" end cases jammed against bunker wall. Eggs broken & leaking because end panels pushed in. 19 cases externally damaged. 289 cases contained 8,670 dozen.	90	0.47	1.0

(P.1193)

Car Line	(1) Car No.	(2) Rail Origin	(3) Date 1950	(4) No. of Cases	(5) No. of Dozens in Car	(6) Destination	(7) Inspection Date	(8) R P I A Inspection Report - - - General Condition of Load	(9) No. of Dozens Broken	(10) % of Doz. Broken to Total Doz.	(11) % Doz. Broken To Doz. in B/O cs.
1	PFE 48394 * TEST o LOAD	Salt Lake City Utah	5/ 9/50	624	18,720	New York City	5/16/50	Excelsior pads - Bunker walls, straw in doorway. After doorway unloaded misalignment of cases noted as shift toward "A" end of car. "A" end cases have compressed heavily on pads 247 cases concealed damage. "B" end cases shifted from wall about 2 to 3 inches on top layer. 29 cases set aside in a leaking condition. 276 cases contained 8,280 dozen.	104	0.56	1.3
2	PFE 41315	Preston Idaho	3/30/50	624	18,720	New York City	4/10/50	Straw buffing. Step-up brace at "B" end of car. 8 cases top layer step-up brace have end panels pushed in ½ to 1 inch. Covers of cases buckled & broken partly off. Load away from "A" end of car up to 2 inches irregularly. "B" end cases top layer tight against bunker wall. 8 cases leaking & bottom layer end cleats split & contents leaking. 24 cases damaged externally 302 cases concealed damage, 326 cases contained 9,780 dozen.	153	0.81	1.6
3	PFE 64114	Preston Idaho	3/28/50	624	18,720	New York City	4/ 6/50	Straw buffing. Step up brace in "B" end All step-up cases door and end have ends pushed in & top cleat broken or loose from end panel 323 cases concealed damage. Cover slats broken or buckled contents leaking & lower cases stained with yolks. 21 cases damaged 341 cases contained 10,230 dozen.	185	0.98	1.8
4	ART 28289	Springville Utah	3/25/50	640	19,200	New York City	4/ 3/50	Straw buffing Verticle alignment irregular in doorway. "A" end shifted 2 inches from wall Cases tight to opposite end. No external damage Inspection 20 cases show 4 eggs broken Load good order.	-0-	-0-	-0-

(P. 484)

Col. / Line	(1) Car No.	(2) Rail Origin	(3) Date 1950	(4) No. of Cases	(5) No. of Dozens in Car	(6) Destination	(7) Inspection Date ~~of Arrival~~	(8) R.P.I.A. Inspection Report -- General Condition of Load	(9) No. of Dozens Broken	(10) % of Doz. Broken to Total Doz.	(11) % Doz. Broken To Doz. in B/O cs.
1	PFE 65794	Preston Idaho	3/24/50	629	18,870	New York City	4/3/50	Straw buffing. Alignment shows slight shift toward "B" end. ½ to 5 inch overlap of cases-lengthwise looseness of stacks. 293 cases concealed damage. Cases tight against "B" bunker. 14 wood cases buckled & ends split & contents leaking. 20 cases damaged. 313 cases contained 9,390 dozen.	187	0.99	2.0
2	PFE 6788 * TEST LOAD	Salt Lake City Utah	3/23/50	624	18,720	Detroit Michigan	3/29/50	Excelsior pads in bunker ends, straw in doorway. Incomplete layer braced by adjacent cases raised 3½ inches. Good order load. No broken cases. Two cases leaking. Total 26 eggs both cases broken.	-0-	-0-	-0-
3	FGEX 57781	Springville Utah	3/24/50	640	19,200	New York City	3/31/50	Straw buffing. Cases tight to both ends. Alignment good. External damage noted as negligible. Good order car.	-0-	-0-	-0-
4	PFE 48452	American Fork Utah	3/23/50	640	19,200	New York City	3/31/50	Straw buffing. Irregular alignment. "B" end cases away from wall. "A" end cases tight against wall. 301 cases concealed damage. Few doorway cases have end panels pushed in. 7 cases show external damage. 308 cases contained 9,240 dozen.	135	0.71	1.5
5	PFE 45107	Preston Idaho	3/23/50	624	18,720	New York City	3/29/50	Straw buffing. Load alignment leaning to "B" from "A" end. About 1 inch shift from "A" bunker wall. 315 cases concealed damage. Cases tight to "B" bunker. Step-up brace "B" end. Cases covers broken & bulged. 8 cases show external damage. 323 cases contained 9,690 dozen.	189	1.0	1.9
6	PFE 4807	American Fork Utah	3/21/50	624	18,720	New York City	3/28/50	Straw buffing. Step-up & k type brace cleated to car sides. Crosspiece loose from cleats. 2 rows against wall cleat jammed in at one corner up to 3 inches & leaking. 300 cases concealed damage. Load against both bunkers. 18 cases damaged by split end panels. 318 cases contained 9,540 dozen.	135	0.72	1.4

(P. 1195)

Col. Line	(1) Car No.	(2) Rail Origin	(3) Date 1950	(4) No. of Cases	(5) No of Dozens in Car	(6) Destination	(7) Inspection Date ~~XX-XX-XXXX~~	(8) R P I A Inspection Report - - General Condition of Load	(9) No. of Dozens Broken	(10) % of Doz. Broken to Total Doz	(11) % Doz. Broken To Doz. in B/O cs.
1	NP 91165	Springville Utah	3/21/50	640	19,200	New York City	3/29/50	Straw buffing. Verticle alignment good. "A" end cases top layer end panels pushed in, wet & leaking, cases tight against bunker wall. 284 cases concealed damage. "B" end cases up to 2⅛ inches away from wall. 26 damaged cases. 310 cases contained 9,300 dozen.	111	0.59	1.2
2	PFE 66432	American Fork Utah	3/21/50	640	19,200	New York City	3/28/50	Straw buffing Verticle alignment good. 5 cases wall row next to door have corners creased & leaking from hand holes-load tight to both bunkers. 275 cases concealed damage. 12 cases damaged. 287 cases contained 8,610 dozen.	104	0.54	1.2
3	PFE 67286 * TEST LOAD	Salt Lake City Utah	3/17/50	624	18,720	Albany New York	3/23/50	Excelsior Blankets-bunker ends & doorways. Step-up brace okay. Load good order. Some covers loose, but inspection shows 10 eggs broken - in several cases examined.	-0-	-0-	-0-
4	PFE 90823 *TEST LOAD	Salt Lake City Utah	3/17/50	640	19,200	New York City	3/23/50	Excelsior Pads-bunker ends, doorways & in between some layers. 31 cases concealed damage. Slight misalignment. "A" end cases moved from wall up to 3 inches. "B" end cases jammed into wall. Pads show heavy compression. 8 cases damaged. 39 cases contained 1,170 dozen.	12	0.06	1.0
5	PFE 6240 * TEST LOAD	Salt Lake City Utah	3/10/50	640	19,200	New York City	3/16/50	Excelsior Pads-bunker ends & doorways. Slight misalignment. "B" end shows some space between cases & wall. "A" end cases tight against bunker wall. No cases damaged. 20 cases examined 4 eggs broken.	-0-	-0-	-0-
6	ART 27829	Springville Utah	3/ 7/50	624	18,720	New York City	3/14/50	Straw buffing Step-up brace "A" end. Cases in brace show covers buckled & some broken. 30 cases concealed damage. Verticle alignment good. "B" end cases jammed against wall. Coverage broken. "A" end moved from bunker 2 to 4 inches. 19 cases externally damaged. 576 cases contained 9,780 dozen.	155	0.82	1.7
								Average % of Dozen's Broken for		0.62	1.3

EXHIBIT NO 46
Witness McDonough

(P. 1191)

fore I.C.C. Docket No. 30030.

THE FOLLOWING CARS SHIPPED DURING 1949 ARRIVED IN GOOD ORDER

Car No.	Lot No.	Rail Origin	Date	Destination	Date of Arrival
FE 66878	9727	American Fork, Utah	3/31/49	New York City, N.Y.	4/7/49
ART 21052	9726	Springville, Utah	3/31/49	Brooklyn, N.Y.	4/8/49
ART 27905	9729	Springville, Utah	4/2/49	Garden City, N.Y.	4/11/49
PFE 40359	9730	Preston, Idaho	4/1/49	Brooklyn, N.Y.	4/11/49
ART 22502	9733	Springville, Utah	4/9/49	Brooklyn, N.Y.	4/19/49
ART 26269	9746	Springville, Utah	5/2/49	Buffalo, N.Y.	5/9/49
PFE 66748	9748	Salt Lake City, Utah	5/4/49	Brooklyn, N.Y.	5/13/49
ART 21007	9755	Springville, Utah	5/14/49	Watertown, N.Y.	5/23/49
ART 21422	9758	Springville, Utah	5/18/49	Buffalo, N.Y.	5/25/49
ART 28114	9760	Springville, Utah	5/27/49	Watertown, N.Y.	5/27/49
PFE 46905	9759	Salt Lake City, Utah	5/19/49	Brooklyn, N.Y.	5/31/49
PFE 48404	9771	American Fork, Utah	5/27/49	Detroit, Michigan	6/6/49
PFE 3689	9775	American Fork, Utah	6/1/49	Detroit, Michigan	6/7/49
PFE 7260	9777	Salt Lake City, Utah	6/3/49	Brooklyn, N.Y.	6/13/49
ART 18705	9778	Springville, Utah	6/4/49	Watertown, N.Y.	6/13/49
PFE 3570	9785	American Fork, Utah	6/9/49	Detroit, Michigan	6/16/49
ART 18686	9786	Springville, Utah	6/10/49	St. Louis, Mo.	6/17/49
PFE 47544	9788	Preston, Idaho	6/13/49	St. Louis, Mo.	6/17/49
ART 17420	9789	Springville, Utah	6/11/49	St. Louis, Mo.	6/17/49
ART 21777	9790	Springville, Utah	6/14/49	St. Louis, Mo.	6/21/49
ART 21325	9793	Springville, Utah	6/17/49	St. Louis, Mo.	6/23/49
PFE 5948	9796	American Fork, Utah	6/20/49	St. Louis, Mo.	6/27/49
ART 18046	9797	Springville, Utah	6/21/49	St. Louis, Mo.	6/27/49
PFE 5511	9795	Salt Lake City, Utah	6/20/49	Brooklyn, N.Y.	6/30/49
PFE 7211	9801	Salt Lake City, Utah	6/24/49	Brooklyn, N.Y.	7/6/49
ART 24207	9804	Springville, Utah	6/27/49	St. Louis, Mo.	7/5/49
PFE 46946	9805	American Fork, Utah	6/28/49	St. Louis, Mo.	7/5/49
SFRD 32702	9807	Springville, Utah	6/29/49	Watertown, N.Y.	7/7/49
SFRD 31809	9809	Springville, Utah	7/2/49	Brooklyn, N.Y.	7/12/49
PFE 63363	9811	Preston, Idaho	7/13/49	Watertown, N.Y.	7/21/49
ART 27497	9825	Springville, Utah	12/3/49	New York City, N.Y.	12/12/49
PFE 45110	9826	Salt Lake City, Utah	12/8/49	New York City, N.Y.	12/19/49
ART 24465	9827	Salt Lake City, Utah	12/9/49	New York City, N.Y.	12/21/49

THE FOLLOWING CARS SHIPPED DURING 1950 ARRIVED IN GOOD ORDER

Car No.	Lot No.	Rail Origin	Date	Destination	
PFE 6240	9830	Salt Lake City, Utah	3/11/50	New York City, N.Y.	
FGE 57781	9843	Springville, Utah	3/24/50	New York City, N.Y.	
ART 28289	9845	Springville, Utah	3/25/50	New York City, N.Y.	
ART 28325	9846	Springville, Utah	3/28/50	Detroit, Michigan	
PFE 4038	9847	American Fork, Utah	3/28/50	Detroit, Michigan	
BREX 74208	9853	Springville, Utah	5/9/50		
ART 27069	9857	Springville, Utah	5/19/50	Buffalo, N.Y.	
ART 27965	9861	Springville, Utah	5/22/50		
ART 20895	9875	Springville, Utah	6/9/50	Detroit, Michigan	
PFE 6871	9876	American Fork, Utah	6/9/50	Detroit, Michigan	

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Before I.C.C. Docket No. 30030

(P.117)

Col.	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Line	Car No.	Rail Origin	Date 1949	No. of Cases	No. of Dozens in Car	Destination	Inspection Date ~~XX~~	R.P.I.A. Inspection Report -- General Condition of Load	No. of Dozens Broken	% of Doz. Broken to Total Doz.	% Doz. Broken to Doz. in B/O cs.
1	PFE 60572	Salt Lake City Utah	12/15/49	640	19,200	New York City	12/27/49	Straw buffing. 16 cases showed external damage. Lot of 10 cases further examined 3 cases revealed some damage, rest of load in good order. 480 dozen in 16 cases.	29	~~XXXX~~ 0.16	~~XXX~~ 6.1
2	ART 24465	Salt Lake City Utah	12/15/49	640	19,200	New York City	12/21/49	Straw buffing. All cases in shipment accepted in good order. No damage.	-0-	-0-	-0-
3	PFE 45110	Salt Lake City Utah	12/3/49 ~~XXXXXX~~	640	19,200	New York City	12/19/49	Straw buffing. All cases in shipment accepted in good order. No damage.	-0-	-0-	-0-
4	PFE 64611	Salt Lake City Utah	12/3/49 ~~XXXXXX~~	640	19,200	New York City	12/12/49	Straw buffing. 24 cases showed external damage-sides crushed in-cases leaking & wet. Rest of load in good order. 720 dozen in 24 cases.	126	~~XXXXX~~ 0.66	~~XXXX~~ 17.5
5	SFRD 7935	Springville Utah	11/5/49	640	19,200	New York City	11/14/49	Straw buffing. 8 cases showed external damage. Inspection revealed only 1 case with internal damage. 240 dozen in 8 cs.	11	~~XXXXX~~ 0.06	~~XXXX~~ 4.6
6	SFRD 9517	Springville Utah	10/22/49	640	19,200	New York City	10/31/49	Straw buffing. 10 cases showed external damage. 298 cases concealed damage. 8 top layer cases ends against bunker wall were jammed in and leaking. 9,240 doz. in 308 cs.	123	~~XXXXX~~ 0.64	~~XXXX~~ 1.2
7	ART 23944	Springville Utah	10/14/49	640	19,200	New York City	10/24/49	Straw buffing. External damage evident, as 27 cases were crushed & leaking. 362 cases concealed damage. End panels pushed in & sides creased. 11,670 dozen in 389 cases.	165	~~XXXXX~~ 0.86	~~XXXX~~ 1.4
8	ART 28822	Springville Utah	10/1/49	640	19,200	New York City	10/19/49	Straw buffing. 37 cases leaking & ends pushed in. 340 cases concealed damage. Cases matted together. 11,310 dozen in 377 cases.	210	~~XXXXX~~ 1.09	~~XXXX~~ 1.8

EXHIBIT NO 47
Witness McDonough

RECORD

P.1197-1214

(P.1198)

Col. Line	(1) Car No.	(2) Rail Origin	(3) Date 1949	(4) No. of Cases	(5) No of Dozens In Car	(6) Destination	(7) Inspection Date of XXXXXX	(8) R.P.I.A. Inspection Report - General Condition of Load	(9) No. of Dozens Broken	(10) % of Doz. Broken to Total Doz.	(11) % Doz. Broken to Doz. in B/O cs
1	ART 24305	Springville Utah	9/24/49	640	19,200	New York City	10/4/49	Straw buffing. External damage evident. 37 cases crushed in & wet & saturated on bottoms. 315 cases concealed damage. Cases matted together-2 stacks jammed against bunker wall "A" end of car. 10,560 dozen in 352 cases.	255	XXXXX 1.36	XXXX 2.4
2	ART 23979	Springville Utah	9/17/49	628	18,840	New York City	9/26/49	Straw buffing. 36 cases showed external evidence of damage. 349 cases concealed damage. Wet & saturated bottoms & matted to lower cases. 11,580 dozen in 385 cases.	109	XXXXX 0.57	XXXXX 0.95
3	ART 24106	Springville Utah	9/9/49	640	19,200	New York City	9/9/49	Straw buffing. Vertical alignment good. 20 cases ends pushed in. 392 cases concealed damage. 9,360 dozen in 312 cases.	109	XXXXX 0.57	XXXX 1.1
4	ART 24376	Springville Utah	8/20/49	640	19,200	New York City	8/29/49	Straw buffing. 18 cases have end panels pushed in. 320 cases concealed damage. "A" end of car cases away from bunker wall. "B" end cases jammed into wall. 10,140 dozen in 338 cases.	130	XXXXX 0.68	XXXX 1.3
5	ART 28105	Springville Utah	8/5/49	640	19,200	New York City	8/15/49	Straw buffing. 20% top layer cases all over car show covers bulged. 8 cases against bunker "A" end show end panels pushed in. 281 cases concealed damage. 45 cases in load show external damage. 9,780 dozen in 320 cases.	129	XXXXX 0.67	XXXX 1.3
6	ART 23575	Springville Utah	7/23/49	640	19,200	New York City	8/1/49	Straw buffing. Rows facing unloading door show ends pushed in from both ends 2 to 3 inches. Sides of 36 cases creased. 328 cases concealed damage. "B" end cases bulged & ends pushed in & jammed into bunker wall. "A" end 1 to 2 inches from wall. 10,920 dozen in 364 cases.	247	XXXXX 1.37	XXXX 2.3

(P.9199)

Col. Line	(1) Car No.	(2) Rail Origin	(3) Date 1949	(4) No. of Cases	(5) No. of Dozens in Car	(6) Destination	(7) Inspection Date	(8) R.P.I.A. Inspection Report -- General Condition of Load	(9) No. of Dozens Broken	(10) % of Doz. Broken to Total Doz.	(11) % Doz. Broken To Doz. in B/O cs.
1	ART 27405	Preston Idaho	7/16/49	640	19,200	New York City	7/28/49	Straw buffing. 37 cases "A" end-end panels pushed in-bottoms wet & leaking-matted to cases underneath. 329 cases concealed damage. "B" end 1 to 1½ inches irregularly away from bunker wall. 10,980 dozen in 366 cases.	151	0.79	1.4
2	PFE 4219	Preston Idaho	5/23/49	624	18,720	Buffi N.Y.	6/3/49	Car showed evidence of se ere rough handling in transit. Crates in upper layers in end of car badly buckled and broken. General breakage throughout car. Necessary to rehandle all 624 cases. 18,720 doz.in 624 cases	551	2.90	2.9
3	PFE 66695	American Fork Utah	5/20/49	640	19,200	New York City	5/3	Straw buffing. 272 cases concealed damage. "B" end of car shows cases broken & bulging tight against bunker wall. "A" end cases 1 to 2 inches from wall. 16 cases with end panels pushed in. 8,640 dozen in 288 cases.	142	0.74	1.6
4	PFE 5749	Salt Lake City Utah	5/16/49	624	18,720	New York City	5/24/49	Straw buffing 304 cases concealed damage. Cases in doorway show damage-ends pushed in, cases leaking & wet bottoms. "B" end right against bunker wall-top row cases have panels pushed in "A" end away from bunker wall 2 inches 1st 3 top layers, 1 inch 2 lower layers. 27 cases externally damaged. 9,930 dozen in 331 cases.	191	1.00	1.9
5	PFE 47427	Salt Lake City Utah	5/24/49	623	18,690	Long Island New York	6/6/49	Straw buffing. 257 cases concealed damage. 41 cases showed external damage. 12 cases had end panels pressed in 1 to 5 inches-stained & leaking. 8,940 doz. in 298 cs.	520	2.20	5.8
	PFE 7413	Salt Lake City Utah	5/12/49	640	19,200	Long Island New York	5/23/49	39 cases showed external damage-ends pushed in 2 to 8 inches, stained & leaking. 200 cases concealed damage. 7,170 dozen in 239 cases.	271	1.40	3.8

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Col. / Line	(1) Car No.	(2) Rail Origin	(3) Date 1949	(4) No. of Cases	(5) No. of Dozens in Car	(6) Destination	(7) Inspection Date	(8) R P I A. Inspection Report -- General Condition of Load	(9) No. of Dozens Broken	(10) % of Doz. Broken to Total Doz.	(11) % Doz. Broken To Doz. in B/O ds.
1	PFE 5674	American Fork Utah	5/6/49	640	19,200	Jersey City New Jersey	5/17/49	18 cases showed external damage. Ends pressed in 1 to 2½ inches, sides bulged, 11 cases with bottom ends round, 7 cases creased in on ends. 36 cases damaged thruout car. 295 cases concealed damage. 9,930 dozen in 331 cases.	168	0.93	1.7
2	PFE 7042	Salt Lake City Utah	5/2/49	648	19,440	Jersey City New Jersey	5/10/49	16 fibre cases showed external damage. Ends pushed in 1 to 2 inches. Balance of car in good order. 480 dozen in 16 cases.	9	0.05	1.9
3	PFE 65454	American Fork Utah	4/29/49	640	19,200	New York City	5/6/49	Straw buffing. 321 cases concealed damage. 1st, 2nd & 3rd stack "B" end car showed cases bulged. Verticle alignment good. 36 cases ends pushed in, stained & leaking. 10,[illegible] dozen in 357 cases.	97	0.50	0.9
4	PFE 67558	Salt Lake City Utah	4/27/49	640	19,200	New York City	5/4/49	Straw buffing. 307 cases concealed damage. "A" end cases tight to bunker wall. "B" end 1½ inches away from bunker wall. 18 cases have ends pushed in-cases leaking. 9,750 dozen in 325 cases.	137	0.7.	1.4
5	SFRD 47185	Preston Idaho	4/26/49	624	18,720	Newark	5/3/49	Straw buffing "B" end cases away from bunker wall 1 to 1½ inches. No external evidence of damage. When lids were lifted fillers of cases show tips bent and flattened against ends & center partitions with breakage in 354 cases. 10,62[illegible] dozen in 354 cases.	176	0.95	1.7

EGGS

ALL [redacted] CARS

AT NEW YORK CITY

JANUARY 1950 - TO - JUNE 1950

I N D E X

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I.C.C. Docket No. 30030
EXHIBIT NO 48
Witness E. A. Hodkinson

EGGS

GRAND SUMMARY

ALL [redacted] CARS AT NEW YORK

DAMAGE CARS

1	2	3	4	5	6	7	8	9	10
				As Billed		Damage			
	Cars	Percent of Total	Egg Revenue	Cases	Dozens	Cases	Dozens	Claim as Recommended	5% Rule
Jan - To - June 1950	367	52.4	$ 153,061.28	153,274	4,598.220	55,180	191,151	$ 73,561.80	45

GOOD ORDER CARS

	334	47.6	117,932.88	126,154	3,784.620	-	-	-	-
Grand Total	701	100.0	$ 270,994.16	279,428	8,382.840	55,180	191,151	$ 73,561.80	45

AVERAGES

DAMAGE CARS

Average Claim Cost Per Damage Dozen (Amount Claim as Recommended Divided By Dozens Damaged) 38.5 cents.
Average Damage of Record Per Damaged Car Cases 150 Dozens 521 Claim as Recommended $200.44
Percentage Claim Liability of Freight Revenue Per Damage Car 48.1%
Percentage Cases Damaged of Cases Billed 36.0% Percentage Dozens Damaged of Dozens Billed 4.2%

ALL CARS

Percentage Claim Liability of Total Revenue 27.1%
Percentage Cases Damaged of Total Cases Billed 19.7% Percentage Dozens Damaged of Total Dozens Billed 2.3%
Average Claim Cost Per Car of Total Cars Billed $104.94

EGGS
SUMMARY
ALL [redacted] CARS AT NEW YORK
DAMAGE CARS

1	2	3	4	5	6	7	8	9	10
				As Billed		Damage			
	Cars	Percent of Total	Egg Revenue	Cases	Dozens	Cases	Dozens	Claim as Recommended	5% Rule
Jan - 1950	54	36.7	$ 21,533.08	23,211	696,330	6,905	25,951	$ 8,348.32	12
GOOD ORDER CARS									
	93	63.3	33,310.70	36,711	1,101,330	-	-	-	-
Grand Total	147	100.0	$ 54,843.78	59,922	1,797,660	6,905	25,951	$ 8,348.32	12

AVERAGES

DAMAGE CARS

Average Claim Cost Per Damage Dozen (Amount Claim as Recommended Divided by Dozens Damaged) 32.2 cents.
Average Damage of Record Per Damaged Car Cases 128 Dozens 481 Claim as Recommended $ 154.60.
Percentage Claim Liability of Freight Revenue Per Damage Car 38.8%.
Percentage Cases Damaged of Cases Billed 29.7% Percentage Dozens Damaged of Dozens Billed 3.7%.

ALL CARS

Percentage Claim Liability of Total Revenue 15.2%.
Percentage Cases Damaged of Total Cases Billed 11.5% Percentage Dozens Damaged of Total Dozens Billed 1.4%.
Average Claim Cost Per Car of Total Cars Billed $ 56.79.

DAMAGE CARS									
Feb - 1950	50	52.1	$ 16,717.53	18,530	555,900	6,021	24,633	$ 7,050.47	13
GOOD ORDER CARS									
	46	47.9	16,400.79	17,267	518,010	-	-	-	-
Grand Total	96	100.0	$ 33,118.32	35,797	1,073,910	6,021	24,633	$ 7,050.47	13

AVERAGES

DAMAGE CARS

Average Claim Cost Per Damage Dozen (Amount Claim as Recommended Divided by Dozens Damaged) 28.6 cents.
Average Damage of Record Per Damaged Car Cases 120 Dozens 493 Claim as Recommended $ 141.01.
Percentage Claim Liability of Freight Revenue Per Damage Car 42.2%.
Percentage Cases Damaged of Cases Billed 32.5% Percentage Dozens Damaged of Dozens Billed 4.4%.

ALL CARS

Percentage Claim Liability of Total Revenue 21.3%.
Percentage Cases Damaged of Total Cases Billed 16.8% Percentage Dozens Damaged of Total Dozens Billed 2.3%.
Average Claim Coast Per Car of Total Cars Billed $ 73.44.

EGGS

SUMMARY

ALL [redacted] CARS AT NEW YORK

DAMAGE CARS

1	2	3	4	5	6	7	8	9	10
		Percent of Total	Egg Revenue	As Billed		Damage		Claim as Recommended	5% Rule
	Cars			Cases	Dozens	Cases	Dozens		
Mar. - 1950	56	45.9	$ 23,537.24	23,941	718,230	8,890	29,967½	$ 10,513.50	6
GOOD ORDER CARS									
	66	54.1	21,496.21	23,100	693,000	-	-	-	-
Grand Total	122	100.0	$ 45,033.45	47,041	1,411,230	8,890	29,967½	$ 10,513.50	6

AVERAGES

DAMAGE CARS

Average Claim Cost Per Damage Dozen (Amount Claim as Recommended Divided by Dozens Damaged) 35.1 cents.
Average Damage of Record Per Damaged Car Cases 159 Dozens 535 Claim as Recommended $ 187.74.
Percentage Claim Liability of Freight Revenue Per Damage Car 44.7%.
Percentage Cases Damaged of Cases Billed 37.1% Percentage Dozens Damaged of Dozens Billed 4.2%.

ALL CARS

Percentage Claim Liability of Total Revenue 23.4%.
Percentage Cases Damaged of Total Cases Billed 18.9% Percentage Dozens Damaged of Total Dozens Billed 2.1%.
Average Claim Cost Per Car of Total Cars Billed $86.18.

DAMAGE CARS

April - 1950	64	56.6	$ 26,769.95	26,079	782,370	10,098	37,338	$ 13,627.51	10
GOOD ORDER CARS									
	49	43.4	16,785.58	17,947	538,410	-	-	-	-
Grand Total	113	100.0	$ 43,555.53	44,026	1,320.780	10,098	37,338	$ 13,627.51	10

AVERAGES

DAMAGE CARS

Average Claim Cost Per Damage Dozen (Amount Claim as Recommended Divided by Dozens Damaged) 36.5 cents.
Average Damage of Record Per Damaged Car Cases 158 Dozens 583 Claim as Recommended $ 212.93.
Percentage Claim Liability of Freight Revenue Per Damage Car 50.9%.
Percentage Cases Damaged of Cases Billed 38.7% Percentage Dozens Damaged of Dozens Billed 4.8%.

ALL CARS

Percentage Claim Liability of Total Revenue 31.3%.
Percentage Cases Damaged of Total Cases Billed 22.9% Percentage Dozens Damaged of Total Dozens Billed 2.8%.
Average Claim Cost Per Car of Total Cars Billed $ 120.60.

EGGS

SUMMARY

ALL [redacted] CARS AT NEW YORK

DAMAGE CARS

1	2	3	4	5	6	7	8	9	10
				As Billed		Damage			
	Cars	Percent of Total	Egg Revenue	Cases	Dozens	Cases	Dozens	Claim as Recommended	5% Rule
May - 1950	73	66.4	$ 28,036.78	29,437	883,110	9,883	33,183½	$ 13,138.54	4
GOOD ORDER CARS									
	37	33.6	12,471.74	13,497	404,910	-	-	-	-
Grand Total	110	100.0	$ 40,508.52	42.934	1,288,020	9,883	33,183½	$ 13,138.54	4

AVERAGES

DAMAGE CARS

Average Claim Cost Per Damage Dozen (Amount Claim as Recommended Divided By Dozens Damaged) 39.6 cents.
Average Damage of Record Per Damaged Car Cases 135 Dozens 455 Claim as Recommended $ 179.98.
Percentage Claim Liability of Freight Revenue Per Damage Car 46.9%.
Percentage Cases Damaged of Cases Billed 33.6% Percentage Dozens Damaged of Dozens Billed 3.8%.

ALL CARS

Percentage Claim Liability of Total Revenue 32.4%.
Percentage Cases Damaged of Total Cases Billed 23.0% Percentage Dozens Damaged of Total Dozens Billed 2.6%.
Average Claim Cost Per Car of Total Cars Billed $ 119.44.

DAMAGE CARS

June - 1950	70	61.9	$ 36,466.70	32,076	962,280	13,383	40,078	$ 20,883.46	-
GOOD ORDER CARS									
	43	38.1	17,467.86	17,632	528,960	-	-	-	-
Grand Total	113	100.0	$ 53,934.56	49,708	1,491,240	13,383	40,078	$ 20,883.46	-

AVERAGES

DAMAGE CARS

Average Claim Cost Per Damage Dozen (Amount Claim as Recommended Divided by Dozens Damaged) 52.1 [redacted] Cents
Average Damage of Record Per Damaged Car Cases 191 Dozens 573 Claim as Recommended $ 298.34.
Percentage Claim Liability of Freight Revenue Per Damage Car 57.3%.
Percentage Cases Damaged of Cases Billed 41.7% Percentage Dozens Damaged of Dozens Billed 4.2%.

ALL CARS

Percentage Claim Liability of Total Revenue 38.7%.
Percentage Cases Damaged of Total Cases Billed 26.9% Percentage Dozens Damaged of Total Dozens Billed 2.7%.
Average Claim Cost Per Car of Total Cars Billed $ 184.81.

EGGS

ALL [redacted] CARS - JAN - 1950 - AT NEW YORK

DAMAGE CARS

	1	2		3	4	5	6	7	8	9	10	11	12
							Damage		Claim				
Line	Release Date	Car Initial And Number		Origin	Egg Revenue	No. Cases Eggs Billed	Cases	Dozens	As Filed	As Recommended	5% Rule Shown By "X"	Claim R.R.	Claim Number
1	1- 3-50	IC	58209	Iowa Falls . . . . . Ia.	$ 55.97	64	7	15	$ 3.70	$ 3.70		DL&W	N-69899
2	1-13-50	URT	1004	Tripoli. . . . . Ia.	340.30	408	155	450	158.88	158.88		Erie	195377-7
3	1-25-50	URT	7212	Tripoli. . . . . Ia.	524.70	600	163	570	204.99	204.99		Erie	196817-7
4	1-20-50	URT	81720	Hartley. . . . . Ia.	640.89	620	293	750	295.20	295.20		Erie	194753-7
5	1-18-50	URT	4920	Hartley. . . . . Ia.	640.89	620	295	750	291.09	291.09		Erie	196014-7
6	1- 9-50	URT	81623	Tripoli. . . . . Ia.	542.19	620	243	691	303.87	303.87		Erie	193632-7
7	1-25-50	NWX	4531	Iowa Falls . . . . . Ia.	349.80	400	166	431	154.10	154.10		Erie	195375-7
8	1-26-50	URT	5032	Tripoli. . . . . Ia.	524.70	600	173	420	154.73	154.73		Erie	195374-7
9	1-12-50	URT	35540	Tripoli. . . . . Ia.	330.00	384	87	269	114.03	114.03		Erie	193634-7
10	1-19-50	NWX	1249	Iowa Falls . . . . . Ia.	419.76	480	112	390	116.01	116.01		Erie	195376-7
11	1-18-50	NRC	18380	Hartley. . . . . Ia.	515.24	496	218	630	258.20	258.20		Erie	194754-7
12	1-31-50	ART	27981	Fosston. . . . . Minn.	607.85	512	262	600	241.55	236.00		Erie	199824-7
13	1-10-50	URT	37195	Edgewood . . . . . Ia.	377.78	432	185	481	161.35	161.35		Erie	194752-7
14	1-24-50	MCLX	70011	West Mason City. . . Ia.	169.65	194	4	38	6.91	5.83	X	DL&W	N-71200
15	1- 1-50	URT	7907	Sumner . . . . . Ia.	419.76	480	59	269	78.06	78.06		DL&W	K-70733
16	1-25-50	URT	7525	Sumner . . . . . Ia.	419.76	480	267	570	243.03	243.03		DI&W	B-71902
17	1-13-50	IC	58265	Jesup. . . . . Ia.	174.90	200	104	332	164.39	161.51		Erie	195373-7
18	1- 6-50	URT	50775	Tripoli . . . . . Ia.	524.70	600	182	420	181.46	181.46		Erie	193165-7
19	1-18-50	URT	50744	Tripoli. . . . . Ia.	335.81	384	176	525	210.91	210.91		Erie	194750-7
20	1-30-50	URT	6022	Tripoli. . . . . Ia.	524.70	600	198	480	175.91	175.91		Erie	197334-7
21	1-17-50	URT	35500	Tripoli. . . . . Ia.	542.56	600	244	780	305.44	305.44		Erie	193633-7
22	1- 9-50	PFE	43955	Tama . . . . . Ia.	417.22	480	187	815	284.98	284.98		LV	761377-1
23	1- 4-50	URT	37430	Worthington. . . . . Ia.	243.38	280	63	233	64.04	40.99	X	LV	760748-1
24	1-27-50	MDT	9014	Dyersville . . . . . Ia.	209.01	239	50	232	62.34	42.19	X	LV	762567-1
25	1- 5-50	NWX	84066	Tama . . . . . Ia.	419.76	480	156	688	216.05	216.05		NYC	SM-N-9268
26	1-10-50	ARL	11505	Minn. Tsfr . . . . Minn.	177.44	186	32	478	104.40	100.79		NYC	6-131035
27	1-10-50	URT	37243	Worthington. . . . . Ia.	301.70	345	9	65	15.62	12.38	X	NYC	W-170
28	1-11-50	URT	37046	Worthington. . . . . Ia.	290.33	332	11	38	11.56	6.54	X	NYC	Z-1107
29	1-27-50	BRE	74870	Minn. Tsfr . . . . Minn.	113.52	119	34	554	164.56	164.56		NYC	38-161658
30	1-26-50	NWX	2202	Iowa City. . . . . Ia.	417.22	480	96	422	121.33	117.50	X	CRIP	543477-11
31	1-24-50	NWX	2331	Iowa Falls . . . . . Ia.	335.81	384	29	101	28.27	28.27		CRIP	B&R-124
32	1-20-50	SFRD	33225	Fosston. . . . . Minn.	607.85	512	12	61	15.51	15.51		CRIP	M-107
33	1-13-50	SFRD	4523	Fosston. . . . . Minn.	607.85	512	237	570	242.27	242.27		CRIP	DP-1758
34	1- 3-50	IC	58213	Iowa Falls . . . . . Ia.	335.81	384	37	245	68.22	68.22		CRIP	B&R-15

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EGGS

ALL [redacted] CARS - JAN - 1950 - AT NEW YORK

DAMAGE CARS

	1	2	3	4	5	6	7	8	9	10	11	12
Line	Release Date	Car Initial And Number	Origin	Egg Revenue	No. Cases Eggs Billed	Damage		Claim		5% Rule Shown By-"X"	Claim	
						Cases	Dozens	As Filed	As Recommended		R.R.	Number
1	1- 5-50	NRC 8328	Arlington. . . . . Minn.	$ 433.38	442	202	1087	$ 320.14	$ 253.12	X	B&O	532893-40
2	1- 5-50	NWX 1332	Iowa Falls . . . . . Ia.	335.81	384	131	488	176.85	176.85		B&O	526148-40
3	1-12-50	MCL 70003	West Mason City. . . Ia.	447.74	512	5	43	10.12	8.36	X	B&O	532120-40
4	1-13-50	NWX 85346	Tama . . . . . Ia.	417.22	480	181	776	272.37	272.37		B&O	530376-34
5	1-20-50	PFE 63044	Arlington. . . . . Minn.	474.56	484	261	1234	300.11	213.92	X	B&O	537485-34
6	1-26-50	URT 8051	Tripoli. . . . . Ia.	521.52	600	133	390	115.59	115.59		B&O	532897-40
7	1-13-50	URT 81253	Tripoli. . . . . Ia.	521.52	600	201	495	194.52	194.52		B&O	527543-34
8	1-18-50	URT 81662	Tripoli. . . . . Ia.	417.22	480	194	450	177.15	177.15		B&O	527567-40
9	1-10-50	MDT 6484	Arlington. . . . . Minn.	449.07	458	180	805	228.06	169.79	X	B&O	532894-40
10	1-26-50	ART 24431	Arlington. . . . . Minn.	582.42	594	173	832	209.49	154.83	X	B&O	537486-34
11	1-19-50	PFE 65910	Arlington. . . . . Minn.	526.53	537	229	1163	306.79	232.00	X	B&O	532896-40
12	1- 5-50	MCL 70006	West Mason City. . . Ia.	447.74	512	10	30		9.66			
13	1-30-50	WFE 49123	West Unity . . . . Ohio	310.36	480	18	46		14.81			
14	1-20-50	SFRD 35037	Fergus Falls . . . Minn.	575.28	512	169	1073		345.51			
15	1-16-50	SFRD 10376	Fergus Falls . . . Minn.	575.28	512	115	549		176.78			
16	1-19-50	ARL 11466	St.Paul. . . . . Minn.	57.20	40	20	282		90.80			
17	1-25-50	MDT 43127	Pana . . . . . Ill.	76.82	96	24	100		32.20			
18	1- 5-50	MCL 70356	West Mason City. . . Ia.	213.38	246	14	98		31.56			
19	1-19-50	ARL 11360	St.Paul. . . . . Minn.	107.25	75	62	1436		462.39			
20	1-30-50	CN 207654	Woodstock. . . . . Ont.	583.97	660	37	217	61.56	61.56		Erie	206560-7
21	Total Cars	54		$21,533.08	23,211 (696,330 Dozens)	6,905	25,951	$7,595.71	$8,348.32	12		

Average Claim Cost Per Damage Dozen Total Col. 9 ÷ Col. 7 = 32.2 cents.
Average Damage of Record Per Car Cases Col. (6 ÷ Col. 2) = 128 Dozens (Col. 7 ÷ Col. 2) = 481 Claim as Recommended (Col. 9 ÷ Col. 2) = $154.60
Percentage Damage Liability of Egg Revenue Col. 9 ÷ Col. 4 = 38.8%
Percentage Damage Cases of Cases Billed Col. 6 ÷ Col. 5 = 29.7%
Percentage Dozens Damaged of Dozens Billed Col. 7 ÷ Col. 5 = 3.7%

Col. 9 ÷ Col. 7 = Average Claim Cost Per Doz. 32.2 x Damaged Dozens.

EGGS

ALL [redacted] CARS - JAN - 1950 - AT NEW YORK

Line	1 Release Date	2 Car Initial And Number	3 Origin	4 Egg Revenue	5 No. Cases Eggs Billed	6 Damage Cases	7 Damage Dozens	8 Claim As Filed	9 Claim As Recommended	10 5% Rule Shown By "X"	11 Claim R.R.	12 Claim Number
1	1-27-50	IC 50030	Jesup. . . . . Ia.	$ 83.95	96	Good Order						
2	1-16-50	IC 58251	Jseup. . . . . Ia.	474.39	208	"	"					
3	1- 3-50	IC 58261	Jesup. . . . . Ia.	444.08	144	"	"					
4	1-23-50	IC 58268	Jesup. . . . . Ia.	83.95	96	"	"					
5	1- 4-50	URT 35503	Tripoli. . . . . Ia.	524.70	600	"	"					
6	1-26-50	NWX 2306	Clarion. . . . . Ia.	457.92	480	"	"					
7	1-13-50	NWX 85361	Clarion. . . . . Ia.	457.92	480	"	"					
8	1-19-50	RD 3067	Clarion. . . . . Ia.	572.40	600	"	"					
9	1-27-50	ART 17276	Tripoli. . . . . Ia.	419.76	480	"	"					
10	1-30-50	URT 8083	Tripoli. . . . . Ia.	524.70	600	"	"					
11	1- 6-50	URT 5088	Tripoli. . . . . Ia.	524.70	600	"	"					
12	1-18-50	NWX 1467	Iowa Falls . . . . . Ia.	419.76	480	"	"					
13	1-17-50	URT 7268	Tripoli. . . . . Ia.	419.76	480	"	"					
14	1- 6-50	NWX 70080	Iowa Falls . . . . . Ia.	419.76	480	"	"					
15	1-13-50	NWX 70398	Iowa Falls . . . . . Ia.	349.80	400	"	"					
16	1-11-50	RD 3709	Bemidji. . . . . Minn.	461.72	409	"	"					
17	1-13-50	URT 8012	Tripoli. . . . . Ia.	335.81	384	"	"					
18	1-19-50	URT 4512	Emmetsburg . . . . . Ia.	496.84	496	"	"					
19	1-12-50	URT 7735	Tripoli. . . . . Ia.	521.40	600	"	"					
20	1-13-50	NWX 70239	Iowa Falls . . . . . Ia.	349.80	400	"	"					
21	1-17-50	FGE 39240	Bemidji. . . . . Minn.	461.72	409	"	"					
22	1-26-50	NRC 8157	Iowa Falls . . . . . Ia.	349.80	400	"	"					
23	1- 4-50	URT 8000	Oxford Jct . . . . . Ia.	419.76	480	"	"					
24	1- 3-50	URT 37320	Worthington. . . . . Ia.	243.38	280	"	"					
25	1-25-50	URT 37023	Worthington. . . . . Ia.	303.45	347	"	"					
26	1-18-50	URT 37028	Worthington. . . . . Ia.	259.72	297	"	"					
27	1-26-50	URT 37343	Worthington. . . . . Ia.	191.52	219	"	"					
28	1-10-50	URT 37050	Worthington. . . . . Ia.	305.09	351	"	"					
29	1-23-50	URT 37464	Worthington. . . . . Ia.	367.29	420	"	"					
30	1-23-50	FGE 10976	Dyersville . . . . . Ia.	274.69	314	"	"					
31	1- 5-50	FGE 59099	Dyersville . . . . . Ia.	231.21	266	"	"					
32	1-27-50	URT 37207	Worthington. . . . . Ia.	266.72	305	"	"					
33	1-12-50	MUN 2005	Iowa City. . . . . Ia.	361.59	416	"	"					
34	1-19-50	ARL 11305	Minn. Tsfr . . . . Minn.	77.27	81	"	"					
35	1- 3-50	MUN 3318	Iowa City. . . . . Ia.	361.59	416	"	"					

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EGGS

ALL [redacted] CARS - JAN - 1950 - AT NEW YORK

Line	1 Release Date	2 Car Initial And Number	3 Origin	4 Egg Revenue	5 No. Cases Eggs Billed	6 Damage Cases	7 Damage Dozens	8 Claim As Filed	9 Claim As Recommended	10 5% Rule Shown By "X"	11 Claim R.R.	12 Claim Number
1	1-12-50	ARL 11320	Minn. Tsfr . . . . Minn.	$ 77.27	81	Good Order						
2	1- 3-50	NWX 84920	Minn. Tsfr . . . . Minn.	77.27	81	"	"					
3	1-13-50	URT 37423	Worthington. . . . . Ia.	434.63	497	"	"					
4	1-17-50	URT 5624	Minn. Tsfr . . . . Minn.	143.10	150	"	"					
5	1-25-50	URT 37436	Worthington. . . . . Ia.	309.57	354	"	"					
6	1-18-50	URT 37438	Worthington. . . . . Ia.	393.35	450	"	"					
7	1-17-50	MUN 3346	Iowa City. . . . . Ia.	361.59	416	"	"					
8	1-13-50	SFRD 36073	Dyersville . . . . . Ia.	406.64	465	"	"					
9	1-30-50	MUN 3361	Iowa City. . . . . Ia.	412.43	340	"	"					
10	1-19-50	FGE 39524	West Unity . . . . .Ohio	310.36	480	"	"					
11	1- 5-50	MDT 42927	West Unity . . . . .Ohio	310.36	480	"	"					
12	1-11-50	SFRD 8634	Vinton . . . . . Ia.	524.70	600	"	"					
13	1- 5-50	MUN 3346	Forest City. . . . . Ia.	383.63	416	"	"					
14	1- 4-50	NWX 84053	Vinton . . . . . Ia.	454.74	520	"	"					
15	1- 4-50	MUN 3361	Iowa City. . . . . Ia.	361.59	388	"	"					
16	1- 5-50	MUN 3370	Osage. . . . . Ia.	454.74	520	"	"					
17	1-18-50	MUN 3372	Osage. . . . . Ia.	454.74	520	"	"					
18	1- 5-50	SFRD 10388	Vinton . . . . . Ia.	370.79	424	"	"					
19	1-12-50	MUN 3489	Osage. . . . . Ia.	363.79	416	"	"					
20	1-24-50	MCL 70025	West Mason City. . . Ia.	335.81	384	"	"					
21	1-27-50	MCL 70006	West Mason City. . . Ia.	196.76	225	"	"					
22	1-31-50	MCL 70010	West Mason City. . . Ia.	30.61	35	"	"					
23	1-18-50	MCL 70014	West Mason City. . . Ia.	335.81	384	"	"					
24	1-13-50	MCL 70021	West Mason City. . . Ia.	331.44	379	"	"					
25	1- 6-50	MCL 70025	West Mason City. . . Ia.	87.45	100	"	"					
26	1-18-50	MCL 70126	West Mason City. . . Ia.	171.40	196	"	"					
27	1-13-50	MCL 70029	West Mason City. . . Ia.	375.16	429	"	"					
28	1-27-50	WFE 66690	Fosston. . . . . Minn.	607.85	512	"	"					
29	1-13-50	NWX 70247	Kasson . . . . . Minn.	419.76	480	"	"					
30	1-10-50	NWX 2361	Kasson . . . . . Minn.	419.76	480	"	"					
31	1-16-50	URT 5766	Sumner . . . . . Ia.	419.76	480	"	"					
32	1-18-50	NWX 70568	Kasson . . . . . Minn.	419.76	480	"	"					
33	1-16-50	URT 37076	Sumner . . . . . Ia.	419.76	480	"	"					
34	1-24-50	URT 81681	Sumner . . . . . Ia.	419.76	480	"	"					
35	1-10-50	NWX 70387	Kasson . . . . . Minn.	419.76	480	"	"					

EGGS

ALL [redacted] CARS - JAN - 1950 - AT NEW YORK

Line	1 Release Date	2 Car Initial And Number	3 Origin	4 Egg Revenue	5 No. Cases Eggs Billed	6 Damage Cases	7 Damage Dozens	8 Claim As Filed	9 Claim As Recommended	10 5% Rule Shown By "X"	11 Claim R.R.	12 Claim Number
1	1-20-50	URT 71[redacted]	Sumner . . . . . Ia.	$419.76	480	Good Order						
2	1-16-50	URT 5095	Sumner . . . . . Ia.	419.76	480	"	"					
3	1-25-50	URT 34007	Sumner . . . . . Ia.	419.76	480	"	"					
4	1- 4-50	MCL 70014	West Mason City. . . Ia.	349.80	400	"	"					
5	1-23-50	URT 1018	Sumner . . . . . Ia.	419.76	480	"	"					
6	1-11-50	URT 7518	Sumner . . . . . Ia.	419.76	480	"	"					
7	1-10-50	MCL 70020	West Mason City. . . Ia.	349.80	400	"	"					
8	1-27-50	URT 81333	Sumner. . . . . Ia.	419.76	480	"	"					
9	1-30-50	URT 7343	Sumner . . . . . Ia.	419.76	480	"	"					
10	1-12-50	URT 35532	Mason City . . . . . Ia.	44.47	49	"	"					
11	1-12-50	URT 4940	Mason City . . . . . Ia.	39.02	43	"	"					
12	1-18-50	NWX 3308	Clarion. . . . . Ia.	457.92	480	"	"					
13	1-26-50	NWX 2836	Clarion. . . . . Ia.	457.92	480	"	"					
14	1-12-50	PFE 61647	Arlington. . . . . Minn.	411.81	420	"	"					
15	1-13-50	NWX 2448	Iowa Falls . . . . . Ia.	384.78	480	"	"					
16	1-18-50	ART 28264	Tripoli. . . . . Ia.	417.22	480	"	"					
17	1-27-50	PFE 62977	Arlington. . . . . Minn.	380.43	388	"	"					
18	1-25-50	URT 7286	Dubuque. . . . . Ia.	401.11	479	"	"					
19	1-10-50	SFRD 7997	Clarion. . . . . Ia.	457.92	480	"	"					
20	1-26-50	NWX 60700	Iowa Falls . . . . . Ia.	419.76	480	"	"					
21	1-13-50	NRC 18540	Sheboygan. . . . . Wis.	300.13	396	"	"					
22	1-13-50	SFRD 34077	Sheboygan. . . . . Wis.	300.13	396	"	"					
23	1- 5-50	ART 28498	Clarion. . . . . Ia.	366.34	384	"	"					
24	Total Cars	93		$33,310.70	36,711 (1,101,330 Dozens)							
Grand Total		147		$54,843.78	59,922 (1,797,660 Dozens)	6,905	25,951	$7,595.71	$8,348.32	12		

Average Claim Cost Per Car of Total Cars Billed (Col. 9 ÷ Col. 2) = $56.79
Percentage Damage Liability of Egg Revenue Col. 9 ÷ Col. 4 = 15.2%
Percentage Damage Cases of Cases Billed Col. 6 ÷ Col. 5 = 11.5%
Percentage Dozens Damages of Dozens Billed. Col. 7 ÷ Col. 5 = 1.4%

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EGGS

ALL 5% CLAIM CARS

(5% APPLIED ACCOUNT OF TARIFF IN EFFECT 7-24-1948)

AT NEW YORK CITY

AUGUST 1948 - TO - JUNE 1950

I.C.C. Docket No. 30030
EXHIBIT NO 49
Witness E.A. Hodkinson

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GRAND - SUMMARY
ALL 5% CLAIM CARS AT NEW YORK
(5% APPLIED ACCOUNT OF TARIFF)
AUGUST 1948 - TO - JUNE 1950

2	3	4	5	6	7	8	9
		Damage		Claim Data			
Cars	Cases Billed	No. Cases	No. Dozens	Amount Filed	Revised Amount A/C 5% Rule	Difference	Percent Difference of Claim Amount Filed
141	62,538 (1,876,140 Dozen)	13,138	48,232½	$ 24,365.96	$ 14,151.62	$ 10,214.34	41.9
rage Claim as Filed. . . .$172.81			Total Cars Released. . . .1,347			Percent 5% Cars of Total Cars. 10.5%	
rage Claim as Revised. . .$100.37			Total Cases Billed . . 636,019			Percent 5% Billed Cases of Total Billed Cases. . 9.8%	
			Total Dozens Billed. 19,080,570				
150	58,472 (1,754,160 Dozens)	12,226	45,135	$ 19,912.31	$11,242.60	$ 8,669.71	43.5
rage Claim as Filed. . . .$132.75			Total Cars Released. 2,693			Percent 5% Cars of Total Cars. 5.6%	
rage Claim as Revised. . . $ 74.95			Total Cases Billed . 1,163,207			Percent 5% Billed Cases of Total Billed Cases. . 5.0%	
			Total Dozens Billed. 34,896,210				
21	5,737 (172,110 Dozens)	840	4,954	$ 1,345.05	$ 962.66	$ 382.39	28.4
rage Claim as Filed. . . .$64.05			Total Cars Released. 588			Percent 5% Cars of Total Cars. 3.6%	
rage Claim as Revised. . .$45.84			Total Cases Billed . . 229,700			Percent 5% Billed Cases of Total Billed Cases. . 2.5%	
			Total Dozens Billed. 6,891,000				
312	126,747 (3,802,410 Dozens)	26,204	98,321½	$ 45,623.32	$ 26,356.88	$ 19,266.44	42.2
rage Claim as Filed. . . .$146.23			Total Cars Released. 4,628			Percent 5% Cars of Total Cars. 6.7%	
rage Claim as Revised. . .$84.48			Total Cases Billed . 2,028,926			Percent 5% Billed Cases of Total Billed Cases. . 6.2%	
			Total Dozens Billed. 60,867,780				

ecord of any 5% Claims up to - July 14, 1950.

SUMMARY
ALL 5% CLAIM CARS AT NEW YORK
(5% APPLIED ACCOUNT OF TARIFF)
AUGUST 1948 - TO - DECEMBER 1948

Col.: 1	2	3	4	5	6	7	8	9
			Damage		Claim Data			
	Cars	Cases Billed	No. Cases	No. Dozens	Amount Filed	Revised Amount A/C 5% Rule	Difference	Percent Difference of Claims Amount Filed
1 Aug. 1948.	37	15,556 (466,680 Dozen)	2,923	10,905½	$ 5,333.47	$ 3,110.78	$ 2,222.69	41.7
	Average Claim as Filed. . . . $144.15			Total Cars Released.	275		Percent 5% Cars of Total Cars.	13.5%
	Average Claim as Revised. . . $84.08			Total Cases Billed .	128,844		Percent 5% Billed Cases of Total Billed Cases. .	12.1%
				Total Dozens Billed.	3,865,320			
2 Sept. 1948 .	36	17,576 (527,280 Dozens)	4,155	15,400½	$ 7,766.84	$ 4,564.54	$ 3,202.30	41.2
	Average Claim as Filed. . . . $215.75			Total Cars Released.	326		Percent 5% Cars of Total Cars.	11.0%
	Average Claim as Revised. . . $126.79			Total Cases Billed .	154,684		Percent 5% Billed Cases of Total Billed Cases. .	11.4%
				Total Dozens Billed.	4,640,520			
3 Oct. 1948. .	17	7,060 (211,800 Dozens)	2,165	7,226½	$ 3,988.15	$ 2,166.38	$ 1,821.77	45.7
	Average Claim as Filed. . . . $234.60			Total Cars Released.	263		Percent 5% Cars of Total Cars.	6.5%
	Average Claim as Revised. . . $127.43			Total Cases Billed .	127,601		Percent 5% Billed Cases of Total Billed Cases. .	5.5%
				Total Dozens Billed.	3,828,030			
4 Nov. 1948. .	15	5,136 (154,080 Dozens)	1,076	4,722	$ 2,514.53	$ 1,628.77	$ 885.76	35.2
	Average Claim as Filed. . . . $167.64			Total Cars Released.	198		Percent 5% Cars of Total Cars.	7.6%
	Average Claim as Revised. . . $108.58			Total Cases Billed .	91,003		Percent 5% Billed Cases of Total Billed Cases. .	5.6%
				Total Dozens Billed.	2,730,090			
5 Dec. 1948. .	36	17,210 (516,300 Dozens)	2,819	9,978½	$ 4,762.97	$ 2,681.15	$ 2,081.82	43.7
	Average Claim as Filed. . . . $132.30			Total Cars Released.	285		Percent 5% Cars of Total Cars.	12.6%
	Average Claim as Revised. . . $74.48			Total Cases Billed .	133,887		Percent 5% Billed Cases of Total Billed Cases. .	12.9%
				Total Dozens Billed.	4,016,610			
6 Grand Total Aug. 1948 to Dec. 1948.	141	62,538 (1,876,140 Dozens)	13,138	48,232½	$ 24,365.96	$ 14,151.62	$ 10,214.34	41.9
	Average Claim as Filed. . . . $172.81			Total Cars Released.	1,347		Percent 5% Cars of Total Cars.	10.5%
	Average Claim as Revised. . . $100.37			Total Cases Billed .	636,019		Percent 5% Billed Cases of Total Billed Cases. .	5.8%
				Total Dozens Billed.	19,080,570			

SUMMARY
ALL 5% CLAIM CARS AT NEW YORK
(5% APPLIED ACCOUNT OF TARIFF)
JANUARY 1949 - TO - DECEMBER 1949

Line	Col.: 1	2	3	4	5	6	7	8	9
				Damage		Claim Data			
		Cars	Cases Billed	No. Cases	No. Dozens	Amount Filed	Revised Amount A/C 5% Rule	Difference	Percent Difference of Claim Amount Filed
1	Jan. 1949.	57	27,600 (828,000 Dozens)	4,052	14,721	$ 5,896.34	$ 3,365.76	$ 2,530.58	42.9
		Average Claim as Filed. . . .	$103.44	Total Cars Released.	356			Percent 5% Cars of Total Cars.	16.0%
		Average Claim as Revised. .	$59.05	Total Cases Billed . . .	172,714			Percent 5% Billed Cases of Total Billed Cases.	16.0%
				Total Dozens Billed.	5,181,420				
2	Feb. 1949. .	14	5,249 (157,470 Dozens)	757	2,488	$ 1,053.09	$ 804.28	$ 448.81	42.6
		Average Claim as Filed. . . .	$75.22	Total Cars Released.	246			Percent 5% Cars of Total Cars.	5.7%
		Average Claim as Revised. . .	$43.16	Total Cases Billed .	113,487			Percent 5% Billed Cases of Total Billed Cases.	4.6%
				Total Dozens Billed.	3,404,610				
3	Mar. 1949. .	12	3,436 (103,080 Dozens)	662	2,317	$ 900.53	$ 542.62	$ 357.91	39.7
		Average Claim as Filed. . . .	$75.04	Total Cars Released.	251			Percent 5% Cars of Total Cars.	4.8%
		Average Claim as Revised. . .	$45.22	Total Cases Billed .	111,266			Percent 5% Billed Cases of Total Billed Cases.	3.1%
				Total Dozens Billed.	3,337,980				
4	Apr. 1949 .	9	3,576 (107,280 Dozens)	939	4,172	$ 1,728.64	$ 1,009.30	$ 719.34	41.6
		Average Claim as Filed. . . .	$192.07	Total Cars Released.	277			Percent 5% Cars of Total Cars.	3.2%
		Average Claim as Revised. . .	$112.14	Total Cases Billed .	121,481			Percent 5% Billed Cases of Total Billed Cases.	2.9%
				Total Dozens Billed.	3,644,430				

SUMMARY

ALL 5% CLAIM CARS AT NEW YORK

(5% APPLIED ACCOUNT OF TARIFF)

Line	Col. 1	2	3	4	5	6	7	8	9
				Damage		Claim Data			
		Cars	Cases Billed	No. Cases	No. Dozens	Amount Filed	Revised Amount A/C 5% Rule	Difference	Percent Difference of Claim Amount Filed
1	May 1949	9	2,838 (85,140 Dozens)	425	2,287½	$ 881.93	$ 536.41	$ 345.52	39.2
	Average Claim as Filed	$97.99		Total Cars Released	359		Percent 5% Cars of Total Cars		2.5%
	Average Claim as Revised	$59.60		Total Cases Billed	162,649		Percent 5% Billed Cases of Total Billed Cases		1.7%
				Total Dozens Billed	4,879,470				
2	June 1949	8	3,234 (97,020 Dozens)	1,416	4,315	$ 1,893.98	$ 923.67	$ 970.31	51.2
	Average Claim as Filed	$236.75		Total Cars Released	308		Percent 5% Cars of Total Cars		2.6%
	Average Claim as Revised	$115.46		Total Cases Billed	133,955		Percent 5% Billed Cases of Total Billed Cases		2.4%
				Total Dozens Billed	4,018,650				
3	July 1949	11	4,117 (123,510 Dozens)	1,617	4,905	$ 2,700.19	$1,256.44	$ 1,443.75	53.5
	Average Claim as Filed	$245.47		Total Cars Released	232		Percent 5% Cars of Total Cars		4.7%
	Average Claim as Revised	$114.22		Total Cases Billed	96,145		Percent 5% Billed Cases of Total Billed Cases		4.3%
				Total Dozens Billed	2,884,350				
4	Aug. 1949	14	4,641 (139,230 Dozens)	1,465	4,565½	$ 2,454.55	$ 1,278.70	$ 1,175.85	47.9
	Average Claim as Filed	$175.33		Total Cars Released	199		Percent 5% Cars of Total Cars		7.0%
	Average Claim as Revised	$91.34		Total Cases Billed	78,372		Percent 5% Billed Cases of Total Billed Cases		5.9%
				Total Dozens Billed	2,351,160				

SUMMARY

ALL 5% CLAIM CARS AT NEW YORK

(5% APPLIED ACCOUNT OF TARIFF)

Line	Col. 1	2	3	4	5	6	7	8	9
				Damage		Claim Data			
		Cars	Cases Billed	No. Cases	No. Dozens	Amount Filed	Revised Amount A/C 5% Rule	Difference	Percent Difference of Claim Amount Filed
1	Sept. 1949	6	1,967 (59,010 Dozens)	368	1,467½	$ 721.09	$ 443.78	$ 277.31	38.5
		Average Claim as Filed. . . . $120.18			Total Cars Released. 149			Percent 5% Cars of Total Cars. 4.0%	
		Average Claim as Revised. . . $ 73.96			Total Cases Billed . 56,487			Percent 5% Billed Cases of Total Billed Cases. . 3.5%	
					Total Dozens Billed. 1,694,610				
2	Oct. 1949	4	1,171 (35,130 Dozens)	299	968	$ 619.43	$ 371.95	$ 247.48	40.0
		Average Claim as Filed. . . . $154.86			Total Cars Released. 113			Percent 5% Cars of Total Cars. 3.5%	
		Average Claim as Revised. . . $92.99			Total Cases Billed . 41,154			Percent 5% Billed Cases of Total Billed Cases. . 2.8%	
					Total Dozens Billed. 1,234,620				
3	Nov. 1949	3	301 (9,030 Dozens)	104	1,202	$ 512.81	$ 436.51	$ 76.30	14.9
		Average Claim as Filed. . . . $170.94			Total Cars Released. 75			Percent 5% Cars of Total Cars. 4.0%	
		Average Claim as Revised. . . $145.50			Total Cases Billed . 24,253			Percent 5% Billed Cases of Total Billed Cases. . 1.2%	
					Total Dozens Billed. 727,590				
4	Dec. 1949	3	342 (10,260 Dozens)	122	1,727	$ 549.73	$ 473.18	$ 76.55	13.9
		Average Claim as Filed. . . . $183.24			Total Cars Released. 128			Percent 5% Cars of Total Cars. 2.3%	
		Average Claim as Revised. . . $157.73			Total Cases Billed . 51,244			Percent 5% Billed Cases of Total Billed Cases. . 0.7%	
					Total Dozens Billed. 1,537,320				
5	Total Year 1949	150	58,472 (1,754,160 Dozens)	12,226	45,135	$ 19,912.31	$ 11,242.60	$ 8.669.71	43.5
		Average Claim as Filed. . . . $132.75			Total Cars Released. 2,693			Percent 5% Cars of Total Cars. 5.6%	
		Average Claim as Revised. . . $ 74.95			Total Cases Billed . 1,163,207			Percent 5% Billed Cases of Total Billed Cases. . 5.0%	
					Total Dozens Billed. 34,896,210				

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EGGS

ALL 4 PERCENT CLAIM CARS

AT NEW YORK CITY

JANUARY 1949 - TO - JUNE 1950

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I.C.C. Docket No. 30030
EXHIBIT NO 50
Witness E. A. Hodkinson

SUMMARY

ALL 5% CLAIM CARS AT NEW YORK

(5% APPLIED ACCOUNT OF TARIFF)

Line	Col.: 1	2	3	4	5	6	7	8	9
				Damage		Claim Data			
		Cars	Cases Billed	No. Cases	No. Dozens	Amount Filed	Revised Amount A/C 5% Rule	Difference	Percent Difference of Claim Amount Filed
1	May 1949	9	2,838 (85,140 Dozens)	425	2,287½	$ 881.93	$ 536.41	$ 345.52	39.2
		Average Claim as Filed. . . . $97.99			Total Cars Released. 359			Percent 5% Cars of Total Cars. 2.5%	
		Average Claim as Revised. . . $59.60			Total Cases Billed . 162,649			Percent 5% Billed Cases of Total Billed Cases. . 1.7%	
					Total Dozens Billed. 4,879,470				
2	June 1949.	8	3,234 (97,020 Dozens)	1,416	4,315	$ 1,893.98	$ 923.67	$ 970.31	51.2
		Average Claim as Filed. . . . $236.75			Total Cars Released. 308			Percent 5% Cars of Total Cars. 2.6%	
		Average Claim as Revised. . . $115.46			Total Cases Billed . 133,955			Percent 5% Billed Cases of Total Billed Cases. . 2.4%	
					Total Dozens Billed. 4,018,650				
3	July 1949.	11	4,117 (123,510 Dozens)	1,617	4,905	$ 2,700.19	$1,256.44	$ 1,443.75	53.5
		Average Claim as Filed. . . . $245.47			Total Cars Released. 232			Percent 5% Cars of Total Cars. 4.7%	
		Average Claim as Revised. . . $114.22			Total Cases Billed . 96,145			Percent 5% Billed Cases of Total Billed Cases. . 4.3%	
					Total Dozens Billed. 2,884,350				
4	Aug. 1949.	14	4,641 (139,230 Dozens)	1,465	4,565½	$ 2,454.55	$ 1,278.70	$ 1,175.85	47.9
		Average Claim as Filed. . . . $175.33			Total Cars Released. 199			Percent 5% Cars of Total Cars. 7.0%	
		Average Claim as Revised. . . $91.34			Total Cases Billed . 78,372			Percent 5% Billed Cases of Total Billed Cases. . 5.9%	
					Total Dozens Billed. 2,351,160				

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SUMMARY

ALL 4 PERCENT CLAIM CARS

JANUARY 1949 - TO - DECEMBER 1949

Line	Col. 1	2	3	4	5	6	7	8	9	10	11	12
		No. of Cars	Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens in Damaged Cases	Normal Expectancy Dozens 4% Col. 6	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference Col. 3 Minus Col. 10	Percent Difference of Amount Filed (Col. 3)
1	January 1949	106	$ 22,854.85	53,636½	14,783	443,490	17,735	33.1	66.9	$ 14,838.84	$ 8,016.01	35.1
2	February 1949	89	16,608.85	43,077	12,379	371,370	14,852	34.5	65.5	10,618.45	5,990.40	36.1
3	March 1949	113	26,463.38	67,842	18,656	559,680	22,387	33.0	67.0	17,249.50	9,213.88	34.8
4	April 1949	143	39,217.06	94,511	25,616	768,480	30,740	32.5	67.5	25,511.69	13,705.37	34.9
5	May 1949	201	61,820.80	142,594½	40,074	1,202,220	48,086	33.7	66.3	39,343.56	22,477.24	36.4
6	June 1949	168	49,914.05	108,296	33,618	1,008,540	40,331	37.2	62.8	31,346.02	18,568.03	37.2
7	July 1949	129	38,545.81	76,768	24,272	728,160	29,121	37.9	62.1	22,968.45	15,577.36	40.4
8	August 1949	112	35,332.29	68,660	20,114	603,420	24,135	35.2	64.8	21,804.87	13,527.42	38.3
9	September 1949	86	26,005.98	45,238	12,972	389,160	15,566	34.4	65.6	16,346.23	9,659.75	37.1
10	October 1949	39	12,061.27	23,126½	7,028	210,840	8,432	36.5	63.5	7,493.92	4,567.35	37.9
11	November 1949	25	5,175.12	10,995	3,382	101,460	4,060	36.9	63.1	3,227.56	1,947.56	37.6
12	December 1949	35	6,433.58	17,413	5,170	155,100	6,205	35.6	64.4	4,044.31	2,389.27	37.1
13	Total Year 1949	1246	$ 340,433.04	752,157½	218,064	6,541,920	261,650	34.8	65.2	$ 214,793.40	$ 125,639.64	36.9

Average Claim Amount As Filed . . . . . Per Car $ 273.22 - Col. 3 ÷ Col. 2

Average Revised Amount . . . . . Per Car $ 172.39 - Col. 10 ÷ Col. 2

Difference . . . . . Per Car $ 100.83

SUMMARY
ALL 5% CLAIM CARS AT NEW YORK
(5% APPLIED ACCOUNT OF TARIFF)
JANUARY 1950 - TO - JUNE 1950

Line	Col. 1	2	3	4	5	6	7	8	9
				Damage		Claim Data			
		Cars	Cases Billed	No. Cases	No. Dozens	Amount Filed	Revised Amount A/C 5% Rule	Difference	Percent Difference of Claim Amount Filed
1	Jan. 1950.	6	1,902 (57,060 Dozens)	142	649½	$175.84	$116.29	$ 59.55	33.9
		Average Claim as Filed. . . . $29.31			Total Cars Released.	147		Percent 5% Cars of Total Cars.	4.1%
		Average Claim as Revised. . . $19.38			Total Cases Billed .	59,922		Percent 5% Billed Cases of Total Billed Cases. .	3.2%
					Total Dozens Billed.	1,797.660			
2	Feb. 1950.	7	1,504 (45,120 Dozens)	217	1,849	$ 429.11	$ 352.17	$ 76.94	17.9
		Average Claim as Filed. . . . $61.30			Total Cars Released.	96		Percent 5% Cars of Total Cars.	0.7%
		Average Claim as Revised. . . $50.31			Total Cases Billed .	35,797		Percent 5% Billed Cases of Total Billed Cases. .	4.2%
					Total Dozens Billed.	1,073,910			
3	Mar. 1950.	2	762 (22,860 Dozens)	43	239½	$ 54.30	$ 39.82	$ 14.48	26.7
		Average Claim as Filed. . . . $27.15			Total Cars Released.	122		Percent 5% Cars of Total Cars.	1.6%
		Average Claim as Revised. . . $19.91			Total Cases Billed .	47,021		Percent 5% Billed Cases of Total Billed Cases. .	1.6%
					Total Dozens Billed.	1,410,630			
4	Apr. 1950.	4	1,102 (33,060 Dozens)	377	1,868	$ 600.71	$ 392.09	$ 208.62	34.7
		Average Claim as Filed. . . . $150.18			Total Cars Released.	113		Percent 5% Cars of Total Cars.	3.5%
		Average Claim as Revised. . . $98.02			Total Cases Billed .	44,026		Percent 5% Billed Cases of Total Billed Cases. .	2.5%
					Total Dozens Billed.	1,320,780			
5	May 1950.	2	467. (14.010 Dozens)	61	348	8,509	$ 62.29	$ 22.80	26.8
		Average Claim as Filed. . . . $42.55			Total Cars Released.	110		Percent 5% Cars of Total Cars.	1.8%
		Average Claim as Revised. . . $31.15			Total Cases Billed .	42,934		Percent 5% Billed Cases of Total Billed Cases. .	1.1%
					Total Dozens Billed.	1,288,020			
6	June 1950.	NO RECORD OF ANY CLAIM UP TO JULY 14, 1950							
7	Total Jan. to June 1950.	21	5,737 (172,110 Dozens)	840	4,954	$ 1,345.05	$ 962.66	$ 382.39	28.4
		Average Claim as Filed. . . . $64.05			Total Cars Released.	588		Percent 5% Cars of Total Cars.	3.6%
		Average Claim as Revised. . . $45.84			Total Cases Billed .	229,700		Percent 5% Billed Cases of Total Billed Cases. .	2.5%
					Total Dozens Billed.	6,891,000			

ALL 5% CARS AT NEW YORK
AUGUST 1948

Line	1 Release Date	2 Car Initial and Number	3 Origin	4 No. of Cases Billed	5 DAMAGE No. of Cases	6 DAMAGE No. of Dozens	7 CLAIM DATA Railroad	8 CLAIM DATA Claim Number	9 CLAIM DATA Amount Filed	10 Revised Amount A/C 5% Rule	11 Difference (9-10)
1	8-10-48	NADX 100	Burket. . . . . Ind.	456	40	82½	D.L.& W.	K. 39701	$ 47.77	$ 12.93	$ 34.84
2	8-6-48	ART 20200	Dubuque . . . . . .Ia.	512	52	142	N.Y.C.	E.W.M.& S. 4505	82.48	38.41	44.07
3	8-3-48	NADX 102	Burket. . . . . Ind.	529	117	340½	D.L.& W.	B. 39651	185.78	90.03	95.75
4	8-6-48	URT 34102	Dubuque . . . . . .Ia.	616	70	296	N.Y.C.	E.W.M.& S. 4503	141.76	91.48	50.28
5	8-5-48	NADX 107	Warsaw. . . . . Ind.	417	19	51	D.L.& W.	H. 39732	26.18	11.55	14.63
6	8-11-48	ART 17108	Dubuque . . . . . .Ia.	400	6	30	N.Y.C.	E.W.M.& S. 4512	13.32	9.32	4.00
7	8-6-48	URT 35010	Dubuque . . . . . .Ia.	580	76	306	N.Y.C.	E.W.M.& S. 4504	142.57	89.45	53.12
8	8-13-48	URT 35011	Dubuque . . . . . .Ia.	385	50	133	N.Y.C.	E.W.M.& S. 4514	71.26	31.07	40.19
9	8-2-48	URT 34012	Dubuque . . . . . .Ia.	609	102	365	N.Y.C.	E.W.M.& S. 4477	184.59	107.21	77.38
10	8-4-48	URT 81220	Plymouth. . . . . Ind.	386	78	153½	D.L.& W.	K. 39700	96.70	23.11	73.59
11	8-3-48	URT 81720	Dubuque . . . . . .Ia.	640	105	395	N.Y.C.	E.W.M.& S. 4502	184.11	114.31	69.80
12	8-3-48	URT 81221	Dubuque . . . . . .Ia.	614	85	309	N.Y.C.	E.W.M.& S. 4500	139.04	81.67	57.37
13	8-2-48	URT 81726	Dubuque . . . . . .Ia.	569	162	427	N.Y.C.	E.W.M.& S. 4478	225.00	98.55	126.45
14	8-19-48	URT 81627	Dubuque . . . . . .Ia.	530	92	357	N.Y.C.	E.W.M.& S. 4519	184.31	112.98	71.33
15	8-31-48	NWX 2128	Hammond . . . . . Ind.	600	294	750	Erie	81508-7	443.17	182.59	260.58
16	8-18-48	FGE 51051	Dubuque . . . . . .Ia.	359	204	728	N.Y.C.	E.W.M.& S. 4517	349.65	203.27	146.38
17	8-18-48	FGE 55158	Dubuque . . . . . .Ia.	640	159	520	N.Y.C.	E.W.M.& S. 4516	260.52	141.02	119.50
18	8-11-48	URT 81262	Dubuque . . . . . .Ia.	540	86	320	N.Y.C.	E.W.M.& S. 4509	157.55	93.90	63.65
19	8-3-48	URT 81663	Dubuque . . . . . .Ia.	498	124	330	N.Y.C.	E.W.M.& S. 4501	187.95	81.95	106.00
20	8-6-48	URT 81267	Dubuque . . . . . .Ia.	447	27	90	N.Y.C.	E.W.M.& S. 4656	47.30	26.02	21.28
21	8-19-48	FGE 52271	Montevideo. . . . . .Minn.	600	97	840	C.M.St.P.& P.	116610-14	290.05	239.81	50.24
22	8-4-48	MDT 17777	Hamlet. . . . . Ind.	378	64	101½	D.L.& W.	K. 39703	66.42	3.75	62.67
23	8-10-48	ART 19183	Dubuque . . . . . .Ia.	635	122	406	N.Y.C.	E.W.M.& S. 4508	200.09	109.91	90.18
24	8-18-48	GAR 9488	Dubuque . . . . . .Ia.	586	139	494	N.Y.C.	E.W.M.& S. 4520	250.96	144.80	106.16
25	8-13-48	ART 21091	Dubuque . . . . . .Ia.	393	44	156	N.Y.C.	E.W.M.& S. 4515	75.33	43.46	31.87
26	8-12-48	URT 86694	Dubuque . . . . . .Ia.	505	246	1,505	N.Y.C.	E.W.M.& S. 4510	714.70	539.46	175.24
27	8-20-48	FGE 59000	Dyersville. . . . . .Ia.	216	22	87½	L.V.	729534-1	40.50	25.23	15.27
28	8-11-48	ART 17309	Dubuque . . . . . .Ia.	154	32	127	N.Y.C.	E.W.M.& S. 4511	66.07	41.10	24.97
29	8-4-48	NAD 110	Servia. . . . . Ind.	431	2	16	Erie	111976-7	6.78	5.51	1.27
30	8-2-48	WFE 49229	Grand Forks . . . . . N.D.	30	30	150	D.L.& W.	K-15484	66.82	46.77	20.05
31	8-17-48	URT 81529	Dubuque . . . . . .Ia.	128	27	90	N.Y.C.	E.W.M.& S. 4518	46.90	25.51	21.39
32	8-5-48	NRC 8134	Dyersville. . . . . .Ia.	212	38	201½	L.V.	729533-1	79.00	56.65	22.35
33	8-30-48	ART 22335	Dyersville. . . . . .Ia.	203	29	157½	L.V.	729535-1	71.90	52.07	19.83
34	8-12-48	FGE 19343	Grand Forks . . . . . N.D.	40	12	40	D.L.& W.	S-19338	13.90	7.65	6.25
35	8-16-48	SFRD 8153	Dyersville. . . . . .Ia.	187	26	148	L.V.	736002-1	63.96	47.11	16.85
36	8-6-48	URT 81191	Dubuque. . . . . .Ia.	130	15	139	N.Y.C.	E.W.M.& S. 81191	60.81	50.96	9.85
37	8-2-48	NWX 3295	Dyersville. . . . . .Ia.	201	30	120¼	L.V.	729531-1	48.27	30.21	18.06
38	TOTAL	Cars 37		15,556 (466,680 Dozens)	2,923	10,905¼			$5,333.47	$3,110.78	$2,222.69

Average Claim as filed total Column 9 - Divided by Total Column 2 -$114.15
Average Claim as revised Total Column 10 - Divided by Total Column 2 -$84.08

Total Cars Released during period 275
Total Cases Billed during period 128,844
Total Dozens Billed during period 3,865,320

Percent 5% Cars of Total Cars 13.5%
Percent 5% Billed Cases of Total Billed Cases 12.1%

GRAND SUMMARY

ALL 4 PERCENT CLAIM CARS

JANUARY 1949 -- TO -- JUNE 1950

Line	Col. 1	2	3	4	5	6	7	8	9	10	11	12
		No. of Cars	Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens in Damaged Cases	Normal Expectancy Dozens 4% Col. 6	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference Col. 3 Minus Col.10	Percentage Difference of Amount Filed (Col. 3)
1	Year 1949	1246	$ 340,433.04	752,157½	218,064	6,541,920	261,650	34.8	65.2	$ 214,793.40	$ 125,639.64	36.9
	Average Claim Amount As Filed . . . . . Per Car $ 273.22 - Col. 3 ÷ Col. 2											
	Average Claim Revised Amount. . . . . Per Car $ 172.39 - Col.10 ÷ Col. 2											
	Difference. . . . . Per Car $ 100.83											
2	January to June 1950. . . .	193	$ 40,069.45	100,051	34,436	1,033,080	41,325	41.3	58.7	$ 22,372.20	$ 17,697.25	44.2
	Average Claim Amount As Filed . . . . . Per Car $ 207.61 - Col. 3 ÷ Col. 2											
	Average Claim Revised Amount. . . . . Per Car $ 115.92 - Col.10 ÷ Col. 2											
	Difference. . . . . Per Car $ 91.69											
3	Grand Total - January 1949 to June 1950.	1439	$380,502.49	852.208½	252,500	7,575,000	302,975	35.6	64.4	$237,165.60	$143,336.89	37.7
	Average Claim Amount As Filed . . . . . Per Car $ 264.42 - Col. 3 ÷ Col. 2											
	Average Claim Revised Amount. . . . . Per Car $ 164.81 - Col.10 ÷ Col. 2											
	Difference. . . . . Per Car $ 99.61											

SUMMARY

ALL 4 PERCENT CLAIM CARS

JANUARY 1950 - TO - JUNE 1950

Line	Col. 1	2	3	4	5	6	7	8	9	10	11	12
		No. of Cars	Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens in Damaged Cases	Normal Expectancy Dozens 4% Col. 6	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference Col. 3 Minus Col. 10	Percent Difference of Amount Filed (Col. 3)
1	January 1950	36	$ 6,172.87	17,085	5,354	160,620	6,423	37.6	62.4	$ 3,763.24	$ 2,409.63	39.0
2	February 1950	28	4,724.65	14,210	4,104	123,120	4,927	34.7	65.3	2,928.75	1,795.90	38.0
3	March 1950	32	7,056.88	18,277	5,999	179,970	7,200	39.4	60.6	4,137.26	2,919.62	41.4
4	April 1950	40	9,534.57	23,515	7,555	226,650	9,065	38.5	61.5	5,560.95	3,973.62	41.7
5	May 1950	33	6,012.56	14,245	5,456	163,680	6,547	46.0	54.0	3,166.48	2,846.08	47.3
6	June 1950	24	6,567.92	12,719	5,968	179,040	7,163	56.3	43.7	2,815.52	3,752.40	57.1
7	Total 6 Months, 1950	193	$ 40,069.45	100,051	34,436	1,033,080	41,325	41.3	58.7	$ 22,372.20	$ 17,697.25	44.2

Average Claim Amount As Filed . . . . . Per Car $ 207.61 - Col. 3 ÷ Col. 2

Average Revised Amount . . . . . Per Car $ 115.92 - Col. 10 ÷ Col. 2

Difference . . . . . Per Car $ 91.69

SUMMARY

ALL 4 PERCENT CLAIM CARS

JANUARY 1949

Line	Col. 1 Release Date	2 Car Int. And No.	3 Origin	4 Claim Amount as Filed	5 Total Damage Claim Dozens	6 Total Cases Damaged	7 Total Dozens in Damaged Cases. 30 x Col. 6	8 Normal Expectancy Dozens 4% of Col.7	9 Percent Col. 8 of Col. 5	10 Liability Percentage 100% Minus % Col. 9	11 Revised Amount of Claim Col.4 x Col.10	12 Difference Col. 4 Minus Col. 11
1	1-26-49	URT 81200	Calmar . . . . . Ia.	$ 82.68	220	56	1,680	67	30.5	69.5	$ 57.46	$ 25.22
2	1- 7-49	NWX 84700	Laurens. . . . . Ia.	13.39	30	1	30	1	3.3	96.7	12.95	.44
3	1-21-49	" 3900	Tripoli. . . . . Ia.	309.97	710	219	6,570	263	37.0	63.0	195.28	114.69
4	1- 4-49	" 3001	Great Meadows. . . . . Minn.	133.38	491	75	2,250	90	18.3	81.7	108.97	24.41
5	1- 7-49	MDT 9301	Chicago. . . . . Ill.	16.01	60	2	60	2	3.3	96.7	15.48	.53
6	1-11-49	NWX 85401	Laurens. . . . . Ia.	20.09	60	4	120	5	8.3	91.7	18.42	1.67
7	1- 5-49	URT 34102	Strawberry Pt. . . . . Ia.	304.39	630	215	6,450	258	41.0	59.0	179.59	124.80
8	1-26-49	URT 34102	Garner . . . . . Ia.	288.55	661	226	6,780	271	41.0	59.0	170.24	118.31
9	1-20-49	PFE 68204	La Belle . . . . . Mo.	166.96	455	115	3,450	138	30.3	69.7	116.37	50.59
10	1-12-49	SFRD 25804	La Belle . . . . . Mo.	174.68	454	109	3,270	131	28.9	71.1	124.20	50.48
11	1-19-49	URT 5705	Kenyon . . . . . Minn.	84.47	185	88	2,640	106	57.3	42.7	36.07	48.40
12	1-18-49	URT 34007	Hartley. . . . . Ia.	596.61	1,620	388	11,640	466	28.8	71.2	424.79	171.82
13	1-17-49	NWX 84007	Laurens. . . . . Ia.	17.86	60	6	180	7	11.7	88.3	15.77	2.09
14	1- 6-49	BREX 75307	Pelican Rapids . . . . Minn.	73.84	193	57	1,710	68	35.2	64.8	47.85	25.99
15	1-14-49	PFE 73508	St. Cloud. . . . . Minn.	252.25	736	144	4,320	173	23.5	76.5	192.97	59.28
16	1- 6-49	URTX 4510	Adair. . . . . Ia.	83.55	211	42	1,260	50	23.7	76.3	63.75	19.80
17	1-12-49	IC 56111	Manawa . . . . . Wisc.	670.15	1,440	397	11,910	476	33.1	66.9	448.33	221.82
18	1-14-49	FGE 59611	Unionville . . . . . N.D.	314.65	759	201	6,030	241	31.8	68.2	214.59	100.06
19	1-17-49	URT 7911	Tripoli. . . . . Ia.	39.18	120	31	930	37	30.8	69.2	27.11	12.07
20	1-21-49	NWX 1313	Clarion. . . . . Ia.	211.57	450	193	5,790	232	51.6	48.4	102.40	109.17
21	1-13-49	URT 7114	Manchester . . . . . Ia.	38.83	105	30	900	36	34.3	65.7	25.51	13.32
22	1-13-49	PFE 45515	Guthrie Center . . . . Ia.	178.08	361	112	3,360	134	37.1	62.9	112.01	66.07
23	1-14-49	NWX 84116	Tama . . . . . Ia.	227.94	554	154	4,620	185	33.4	66.6	151.81	76.13
24	1-27-49	PFE 61716	Unionville . . . . . Mo.	140.58	373	121	3,630	145	38.9	61.1	85.89	54.69
25	1- 3-49	NRC 14117	St. Cloud. . . . . Minn.	309.66	778	139	4,170	167	21.5	78.5	243.08	66.58
26	1-26-49	URT 5019	Tripoli. . . . . Ia.	353.69	721	242	7,260	290	40.2	59.8	211.51	142.18
27	1-28-49	NRC 5519	Fertile. . . . . Minn.	254.90	461	220	6,600	264	57.3	42.7	108.84	146.06
28	1-18-49	NWX 1320	Rochester. . . . . Minn.	261.64	813	124	3,720	149	18.3	81.7	213.76	47.88
29	1-14-49	NWX 1323	Sleepy Eye . . . . . Minn.	98.78	216	67	2,010	80	37.0	63.0	62.23	36.55
30	1-19-49	NWX 84323	Laurens. . . . . Ia.	43.74	120	14	420	17	14.2	85.8	37.53	6.21
31	1- 5-49	NWX 84423	Tama . . . . . Ia.	258.94	512	211	6,330	253	49.4	50.6	131.02	127.92
32	1- 6-49	URT 35025	Manchester . . . . . Ia.	33.34	64	28	840	34	53.1	46.9	15.64	17.70
33	1-19-49	URT 37225	Grand Meadows. . . . . Minn.	63.29	157	45	1,350	54	34.4	65.6	41.52	21.77
34	1-21-49	NRC 6828	St. Cloud. . . . . Minn.	201.34	635	143	4,290	172	27.1	72.9	146.78	54.56
35	1-12-49	GARX 67829	Hartley. . . . . Ia.	238.77	600	176	5,280	211	35.2	64.8	154.72	84.05

ALL 4 PERCENT CLAIM CARS

JANUARY 1949

Line	Col. 1 Release Date	2 Car Int. And No.	3 Origin	4 Claim Amount as Filed	5 Total Damage Claims Dozens	6 Total Cases Damaged	7 Total Dozens in Damaged Cases 30 x Col. 6	8 Normal Expectancy Dozens 4% of Col. 7	9 Percent Col. 8 of Col. 5	10 Liability Percentage 100% Minus % Col. 9	11 Revised Amount of Claim Col. 4 x Col. 10	12 Difference Col. 4 Minus Col. 11
1	1- 4-49	GARX 90630	Iowa Falls . . . . . Ia.	$ 39.41	120	21	630	25	20.8	79.2	$ 31.21	$ 8.20
2	1- 5-49	URT 35630	Tripoli . . . . . Ia.	291.11	570	247	7,410	296	51.9	48.1	140.02	151.09
3	1- 7-49	PFE 66231	Twin City Mpls . . . . Minn.	321.80	719	194	5,820	233	32.4	67.6	217.54	104.26
4	1-31-49	NWX 2732	Grundy Center . . . . . Ia.	101.23	292	70	2,100	84	28.8	71.2	72.08	29.15
5	1-19-49	URT 81233	Calmar . . . . . Ia.	176.11	443	112	3,360	134	30.2	69.8	122.92	53.19
6	1-26-49	PFE 60833	Wadena . . . . . Minn.	92.89	471	45	1,350	54	11.5	88.5	82.21	10.68
7	1-21-49	URT 37340	Spencer . . . . . Ia.	339.21	1,026	236	7,080	283	27.6	72.4	245.59	93.62
8	1-14-49	MDT 45440	Staples . . . . . Minn.	278.27	729	168	5,040	202	27.7	72.3	201.19	77.08
9	1- 7-49	NWX 85440	Laurens . . . . . Ia.	323.55	811	205	6,150	246	30.3	69.7	225.51	98.04
10	1-26-49	URT 5742	Kenyon . . . . . Minn.	975.48	630	248	7,440	298	47.3	52.7	514.08	461.40
11	1-12-49	ART 20742	Dubuque . . . . . Ia.	14.10	33	4	120	5	15.2	84.8	11.96	2.14
12	1-19-49	GARX 9143	Chicago . . . . . Ill.	452.53	1,050	302	9,060	362	34.5	65.5	296.41	156.12
13	1-11-49	NP 94543	Staples . . . . . Minn.	289.25	683	124	3,720	149	21.8	78.2	226.19	63.06
14	1- 7-49	NWX 1245	George . . . . . Ia.	172.58	415	109	3,270	131	31.6	68.4	118.04	54.54
15	1-13-49	MDT 21745	Chicago . . . . . Ill.	175.64	570	110	3,300	132	23.2	76.8	134.89	40.75
16	1-20-49	FGE 19047	Fosston . . . . . Minn.	8.92	30	1	30	1	3.3	96.7	8.63	.29
17	1-28-49	NWX 2347	Hills . . . . . Minn.	53.29	154	37	1,110	44	28.6	71.4	38.05	15.24
18	1-11-49	NWX 4649	Iowa Falls . . . . . Ia.	214.83	360	197	5,910	236	65.6	34.4	73.90	140.93
19	1-28-49	PFE 41853	Hartley . . . . . Ia.	553.81	1,620	374	11,220	449	27.7	72.3	400.40	153.41
20	1- 3-49	URT 8154	Tripoli . . . . . Ia.	359.68	690	201	6,030	241	34.9	65.1	234.15	125.53
21	1-14-49	URT 7354	Chicago . . . . . Ill.	396.59	950	287	8,610	344	36.2	63.8	253.02	143.57
22	1-13-49	URT 84560	Clarion . . . . . Ia.	68.17	147	58	1,740	70	47.6	52.4	35.72	32.45
23	1-17-49	MDT 146560	Adair . . . . . Ia.	69.22	173	49	1,470	59	34.1	65.9	45.62	23.60
24	1-14-49	PFE 43161	Minneapolis . . . . . Minn.	308.44	618	227	6,810	272	44.0	56.0	172.73	135.71
25	1-11-49	NWX 85361	Tama . . . . . Ia.	351.28	650	201	6,030	241	37.1	62.9	220.96	130.32
26	1-19-49	NWX 84062	Tama . . . . . Ia.	290.73	610	244	7,320	293	48.0	52.0	151.18	139.55
27	1-28-49	URT 35562	Hartley . . . . . Ia.	402.70	1,171	297	8,910	356	30.4	69.6	280.28	122.42
28	1-26-49	URT 8163	Tripoli . . . . . Ia.	293.84	720	197	5,910	236	32.8	67.2	197.46	96.38
29	1-27-49	SFRD 36465	Minneapolis . . . . . Minn.	281.02	668	215	6,450	258	38.6	61.4	172.55	108.47
30	1-27-49	URT 5067	Marshalltown . . . . . Ia.	231.08	445	187	5,610	224	50.3	49.7	114.85	116.23
31	1- 7-49	IC 56067	St. Cloud . . . . . Minn.	176.39	591	101	3,030	121	20.5	79.5	140.23	36.16
32	1-27-49	ART 16867	Adair . . . . . Ia.	138.56	311	88	2,640	106	34.1	65.9	91.31	47.25
33	1-26-49	PFE 46371	Pelican Rapids . . . . Minn.	144.62	339	141	4,230	169	49.9	50.1	72.45	72.17
34	1-31-49	URT 5771	Sumner . . . . . Ia.	123.74	319	93	2,790	112	35.1	64.9	80.31	43.43
35	1- 4-49	IC 53275	Hills . . . . . Minn.	222.55	640	132	3,960	158	24.7	75.3	167.58	54.97
36	1-13-49	URT 81575	Hartley . . . . . Ia.	145.13	300	115	3,450	138	46.0	54.0	78.37	66.76

ALL 4 PERCENT CLAIM CARS

JANUARY 1949

Line	Col. 1 Release Date	2 Car Int. And No.	3 Origin	4 Claim Amount as Filed	5 Total Damage Claims Damaged	6 Total Cases Damaged	7 Total Dozens in Damaged Cases 30 x Col. 6	8 Normal Expectancy Dozens 4% of Col. 7	9 Percent Col. 8 of Col. 5	10 Liability Percentage 100% Minus Col. 9	11 Revised Amount of Claim Col. 4 x Col. 10	12 Difference Col. 4 Minus Col. 11
1	1-14-49	NW 4575	Spring Valley . . . . Wisc.	$ 583.73	1,260	341	10,230	409	32.5	67.5	$ 394.02	$ 189.71
2	1- 6-49	SFRD 25575	George . . . . . Ia.	76.67	173	48	1,440	58	33.5	66.5	50.99	25.68
3	1-21-49	MDT 45876	Adair. . . . . Ia.	125.35	288	97	2,910	116	40.3	59.7	74.83	50.52
4	1-6-49	SFRD 35277	Hills. . . . . Minn.	15.10	40	2	60	2	5.0	95.0	14.35	.75
5	1-19-49	URT 37377	Hartley. . . . . Ia.	538.92	1,610	335	10,050	402	25.0	75.0	404.19	134.73
6	1-3 -49	NWX 2278	Kasson . . . . . Minn.	85.77	189	34	1,020	41	21.7	78.3	67.16	18.61
7	1-14-49	SFRD 24180	Dawson . . . . . Minn.	202.24	426	161	4,830	193	45.3	54.7	110.63	91.61
8	1-13-49	NP 92380	Fertile. . . . . Minn.	320.55	825	189	5,670	227	27.5	72.5	232.40	88.15
9	1-12-49	URT 7381	Kenyon . . . . . Minn.	119.35	226½	82	2,460	98	43.3	56.7	67.67	51.68
10	1-19-49	NWX 3082	Clarion. . . . . Ia.	144.33	360	119	3,570	143	39.7	60.3	87.03	57.30
11	1-28-49	NRC 4382	St. Cloud. . . . . Minn.	235.03	848	191	5,730	229	27.0	73.0	171.57	63.46
12	1- 7-49	URT 7385	Tripoli. . . . . Ia.	345.99	690	209	6,270	251	36.4	63.6	220.05	125.94
13	1- 6-49	ART 17385	Dawson . . . . . Minn.	104.38	166	64	1,920	77	46.4	53.6	55.95	48.43
14	1-24-49	GAR 67387	Clarion. . . . . Ia.	157.42	380	133	3,990	160	42.1	57.9	91.15	66.27
15	1-14-49	GAR 9488	Hartley. . . . . Ia.	303.02	746	243	7,290	292	39.1	60.9	184.54	118.48
16	1-20-49	PFE 92888	Unionville . . . . . Mo.	106.70	261	87	2,610	104	39.8	60.2	64.23	42.47
17	1-26-49	MDT 18689	Detroit. . . . . Mich.	396.31	720	276	8,280	331	46.0	54.0	214.01	182.30
18	1- 6-49	MDT 5390	Detroit. . . . . Mich.	253.14	394	241	7,230	289	73.4	26.6	67.34	185.80
19	1-24-49	FGE 50490	Long Prairie . . . . . Minn.	260.45	453	239	7,170	287	63.4	36.6	95.32	165.13
20	1- 5-49	MDT 5695	Spencer. . . . . Ia.	438.28	1,217	275	8,250	330	27.1	72.9	319.51	118.77
21	1-31-49	NWX 84096	Tama . . . . . Ia.	199.40	522	182	5,460	218	41.8	58.2	116.05	83.35
22	1-20-49	ART 28896	Detroit. . . . . Mich.	315.65	725	242	7,260	290	40.0	60.0	189.39	126.26
23	1-25-49	ART 19198	Glencoe. . . . . Minn.	291.54	583	221	6,630	265	45.5	54.5	158.89	132.65
24	1- 6-49	NWX 1402	Hills. . . . . Minn.	45.77	85	33	990	40	47.1	52.9	24.21	21.56
25	1- 6-49	NWX 2802	Hubbard. . . . . Ia.	321.92	720	204	6,120	245	34.0	66.0	212.47	109.45
26	1- 7-49	IC 58211	Jessup . . . . . Ia.	262.93	440	183	5,490	220	50.0	50.0	131.47	131.46
27	1-27-49	MDT 45814	Hills. . . . . Minn.	42.84	120	38	1,140	46	38.3	61.7	26.43	16.41
28	1-17-49	ART 228	Everett. . . . . Kans.	6.96	19	4	120	5	26.3	73.7	5.13	1.83
29	1-10-49	WCL 8429	Eagle Grove. . . . . Ia.	163.25	469	46	1,380	55	11.7	88.3	144.15	19.10
30	1-14-49	ART 243	Linn . . . . . Kans.	43.93	125	12	360	14	11.2	88.8	39.01	4.92
31	1-20-49	NWX 4553	Iowa Falls . . . . . Ia.	31.25	114	12	360	14	12.3	87.7	27.41	3.84
32	1- 5-49	NADX 6360	Minnesota Trf. . . . Minn	199.17	640	70	2,100	84	13.1	86.9	173.08	26.09
33	1-27-49	NWX 84269	Hubbard. . . . . Ia.	33.58	102	19	570	23	22.5	77.5	26.02	7.56
34	1- 4-49	FGEX 63690	Minnesota Trf. . . . Minn.	507.87	1,230	42	1,260	50	4.1	95.9	487.05	20.82
35	1-28-49	MUNX. 3396	Iowa City. . . . . Ia.	140.56	387	77	2,310	92	23.8	76.2	107.11	33.45
			TOTAL CARS 106	$22,854.85	53,636½	14,783	443,490	17,735	33.1	66.9	$14,838.84	$8,016.01

EGGS

ALL 6% CLAIM CARS -
AT NEW YORK CITY
JAN. 1949 - TO - JUNE 1950

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I.C.C. Docket No. 30030
EXHIBIT NO. 51
Witness E. A. Hodinson

GRAND SUMMARY
ALL 6% CLAIM CARS - AT NEW YORK
JAN. 1949 - TO - JUNE 1950

LINE	COL. 1	2 Cars	3 Claim Amount As Filed	4 Total Damage Claim Dozens	5 Total Cases Damaged	6 Total Dozens In Damaged Cases	7 Normal Expectancy Dozens 6% Col. 6	8 Percent Col. 7 of Col. 4	9 Liability Percentage 100% Minus Col. 8	10 Revised Amount of Claim	11 Difference Col. 3 Minus Col. 10	12 Percent Difference Amount As Filed (Col. 3)
1	Jan. to Dec. 1949.	150	$ 19,911.91	45,135	12,136	364,080	21,840	48.4	51.6	$ 9,720.87	$ 10,191.04	51.2
	Average Claim Amount as Filed. . . . . .Per Car $ 132.75 Col. 3 ÷ Col. 2											
	Average Revised Amount of Claim. . . . . .Per Car $ 64.81 Col. 10 ÷ Col. 2											
	Difference . . . . . .Per Car $ 67.94											
2	Jan. to June 1950.	21	$ 1,345.05	4,954	840	25,200	1,512	30.5	69.5	$ 901.25	$ 443.80	33.0
	Average Claim Amount as Filed. . . . . .Per Car $ 64.05 Col. 3 ÷ Col. 2											
	Average Revised Amount of Claim. . . . . .Per Car $ 42.92 Col. 10 ÷ Col. 2											
	Difference . . . . . .Per Car $ 21.13											
3	Grand Total Jan. 1949 to June 1950.	171	$ 21,256.96	50,089	12,976	389,280	23,352	46.6	53.4	$10,622.12	$ 10,634.84	50.0
	Average Claim Amount as Filed. . . . . .Per Car $ 124.31 Col. 3 ÷ Col. 2											
	Average Revised Amount of Claim. . . . . .Per Car $ 62.12 Col. 10 ÷ Col. 2											
	Difference . . . . . .Per Car $ 62.19											

SUMMARY
ALL 6% CLAIM CARS AT NEW YORK
JAN. 1949 TO DEC. 1949.

LINE	COL.	2	3	4	5	6	7	8	9	10	11	12
		Cars	Claim Amount As Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens In Damaged Cases	Normal Expectancy Dozens 6% Col. 6	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus Col. 8	Revised Amount of Claim	Difference Col. 3 Minus Col. 10	Percent Difference Amount As Filed (Col. 3)
1	Jan. 1949	57	$ 5,295.94	14,721	4,052	121,560	7,292	49.5	50.5	$ 2,896.42	$ 2,999.52	50.9
2	Feb. 1949	14	1,053.09	2,488	757	22,710	1,362	54.7	45.3	445.16	607.93	57.7
3	March 1949	12	900.53	2,317	662	19,860	1,191	51.4	48.6	434.69	465.84	51.7
	April 1949	9	1,728.64	4,172	939	28,170	1,691	40.5	59.5	1,038.61	690.03	39.9
4	A[illegible] 1949	9	881.93	2,287½	425	12,750	765	33.4	66.6	582.04	299.89	34.0
5	May 1949	8	1,893.98	4,315	1,416	42,480	2,548	59.0	41.0	731.16	1,162.82	61.4
6	June 1	11	2,700.19	4,905	1,617	48,510	2,910	59.3	40.7	930.69	1,769.50	65.5
7	July 194[illegible]	14	2,454.55	4,565½	1,375	41,250	2,475	54.2	45.8	1,060.04	1,394.51	56.8
8	Aug. 1949	6	721.09	1,467½	368	11,040	662	45.1	54.9	387.99	333.10	46.2
9	Sept. 1949	4	619.43	968	299	8,970	538	55.6	44.4	302.66	316.77	51.1
10	Oct. 1949	3	512.81	1,202	104	3,120	187	15.6	84.4	430.30	82.51	16.1
11	Nov. 1949	3	549.73	1,727	122	3,660	219	12.7	87.3	481.11	68.62	12.5
12	Dec. 1949	158	$19,911.91	45,135	12,136	364,080	21,840	48.4	51.6	$ 9,720.87	$ 10,191.04	51.2
13	Total Year 1949											

Average Claim Amount as Filed. . . . . .Per Car $ 132.75 Col. 3 ÷ Col. 2
Average Revised Amount of Claim. . . . . .Per Car $ 64.81 Col. 10 ÷ Col.2
Difference . . . . . .Per Car $ 67.94

SUMMARY
ALL 6% CLAIM CARS AT NEW YORK
JAN. 1950 TO JUNE 1950

LINE	COL. 1	2	3	4	5	6	7	8	9	10	11	12
		Claim	Claim Amount As Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens In Damaged Cases	Normal Expectancy Dozens 6% Col. 6	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus Col. 8	Revised Amount of Claim	Difference Col. 3 Minus Col. 10	Percent Difference Amount As Filed (Col. 3)
1	Jan. 1950	6	$ 175.84	649½	142	4,260	255	39.3	60.7	$ 104.74	$ 71.10	40.4
2	Feb. 1950	7	429.11	1,849	217	6,510	391	21.1	78.9	331.01	98.10	22.9
3	Mar. 1950	2	54.30	239½	43	1,290	77	32.2	67.8	36.84	17.46	32.2
4	April 1950	4	600.71	1,868	377	11,310	679	36.3	63.7	370.95	229.76	38.2
5	May 1950	2	85.09	348	61	1,830	110	31.6	68.4	57.71	27.38	32.2
6	June 1950	No Record of Any Claims up to July 14, 1950										
7	Total Jan. to June 1950	21	1,345.05	4,954	840	25,200	1,512	30.5	69.5	901.25	443.80	33.0

Average Claim Amount as Filed . . . . . Per Car $ 64.05 Col. 3 ÷ Col. 2
Average Revised Amount of Claim . . . . . Per Car $ 42.92 Col. 10 ÷ Col. 2
Difference . . . . . Per Car $ 21.13

E G G S

ALL COMBINATION {4/6 PERCENT CLAIM CARS

AT NEW YORK CITY

JANUARY 1949 - TO - JUNE 1950

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I.C.C. Docket No. 30030
EXHIBIT NO 52
Witness E. A. Hodkinson

GRAND SUMMARY

COMBINATION { 4 / 6 PERCENT CLAIM CARS AT NEW YORK

JANUARY 1949 - TO - JUNE 1950

Line	Col.: 1	2		3	4	5	6	7	8	9	10	11	12
		Cars		Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens in Damaged Cases	Normal Expectancy 4% of "A" 6% of "B"	Percent Col. 7 of Col.4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference	Percent Difference of Claim Amount as Filed
1	Jan. to Dec. 1949.	154	A	$ 18,522.78	43,415	10,820	324,600	12,984	29.9	70.1	$ 12,290.15	$ 6,232.63	33.6
			B	22,203.36	53,584	13,010	390,300	23,415	43.7	56.3	11,611.00	10,592.36	47.7
		Total A and B		40,726.14	96,999	23,830	714,900	36,399	37.5	62.5	23,901.15	16,824.99	41.3
		Average Claim Amount As Filed. . .		Per Car A - $120.27		B - $144.18		Total A and B - $264.45					
		Average Revised Amount		Per Car A - $ 79.80		B - $ 75.40		Total A and B - $155.20					
		Difference		Per Car A - $ 40.47		B - $ 68.78		Total A and B - $109.25					
2	Jan. to June 1950.	28	A	$ 1,843.15	6,216	1,359	40,770	1,632	26.3	74.7	$ 1,357.50	$ 485.65	26.3
			B	4,095.69	14,801	3,057	91,710	5,501	37.2	62.8	2,574.87	1,520.82	37.1
		Total A and B		5,938.84	21,017	4,416	132,480	7,133	33.9	66.1	3,932.37	2,006.47	33.8
		Average Claim Amount As Filed. . .		Per Car A - $ 65.83		B - $146.27		Total A and B - $212.10					
		Average Revised Amount		Per Car A - $ 48.48		B - $ 91.96		Total A and B - $140.44					
		Difference		Per Car A - $ 17.35		B - $ 54.31		Total A and B - $ 71.66					
3	Jan. 1949 to June 1950 . . .	182	A	$ 20,365.93	49,631	12,179	365,370	14,616	29.4	70.6	$ 13,647.65	$ 6,718.28	33.0
			B	26,299.05	68,385	16,067	482,010	28,916	42.3	57.7	14,185.87	12,113.18	46.1
		Total A and B		46,664.98	118,016	28,246	847,380	43,532	36.9	63.1	27,833.52	18,831.46	40.4
		Average Claim Amount As Filed. . .		Per Car A - $111.90		B - $144.50		Total A and B - $256.40					
		Average Revised Amount		Per Car A - $ 74.99		B - $ 77.94		Total A and B - $152.93					
		Difference		Per Car A - $ 36.91		B - $ 66.56		Total A and B - $103.47					

A - 4% Claim Cars
B - 6% Claim Cars

SUMMARY

COMBINATION { 4 / 6 PERCENT CLAIM CARS AT NEW YORK

JANUARY 1949 - TO - DECEMBER 1949

Line	Col. 1	2	3	4	5	6	7	8	9	10	11	12
		Cars	Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens in Damaged Cases	Normal Expectancy 4% of "A" 6% of "B"	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference	Percent Difference of Claim Amount as Filed
1	Jan. to Dec. 1949	154 A	$ 18,523.78	43,415	10,820	324,600	12,984	29.9	70.1	$ 12,290.15	$ 6,232.63	33.6
		B	22,203.36	53,584	13,010	390,300	23,415	43.7	56.3	11,611.00	10,592.36	47.7
		Total A and B	40,726.14	96,999	23,830	714,900	36,399	37.5	62.5	23,901.15	16,824.99	41.3

Average Claim Amount As Filed. . . Per Car A - $120.27 B - $144.18 Total A and B - $264.45

Average Revised Amount . . . . . Per Car A - $ 79.80 B - $ 75.40 Total A and B - $155.20

Difference . . . . . Per Car A - $ 40.47 B - $ 68.78 Total A and B - $109.25

A - 4% Claim Cars
B - 6% Claim Cars

SUMMARY

COMBINATION { 4 / 6 } PERCENT CLAIM CARS AT NEW YORK

JANUARY 1949 - TO - DECEMBER 1949

Line	Col. 1	2	3	4	5	6	7	8	9	10	11	12
		Cars	Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens in Damaged Cases	Normal Expectancy 4% of "A" 6% of "B"	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference	Percent Difference of Claim Amount as Filed
1	Jan. 1949	6 A	$ 655.79	2,019½	469	14,070	563	27.9	72.1	$ 463.45	$ 192.34	29.3
		B	557.36	1,257½	415	12,450	747	59.4	40.6	203.72	353.64	63.4
		Total A and B	1,213.15	3,277	884	26,520	1,310	40.0	60.0	667.17	545.98	45.0
		Average Claim Amount As Filed . . . Per Car A - $109.30 B - $ 92.89 Total A and B - $202.19										
		Average Revised Amount . . . . . Per Car A - $ 77.24 B - $ 33.95 Total A and B - $111.19										
		Difference . . . . . Per Car A - $ 32.06 B - $ 58.94 Total A and B - $ 91.00										
2	Feb. 1949	3 A	$ 235.00	688	217	6,510	260	37.8	62.2	$ 145.46	$ 89.54	38.1
		B	175.11	453	133	3,990	239	52.8	47.2	78.46	96.65	55.2
		Total A and B	410.11	1,141	350	10,500	499	43.7	56.3	223.92	186.19	45.4
		Average Claim Amount As Filed. . . Per Car A - $ 78.33 B - $ 58.37 Total A and B - $136.70										
		Average Revised Amount . . . . . Per Car A - $ 48.49 B - $ 26.15 Total A and B - $ 74.64										
		Difference . . . . . Per Car A - $ 29.84 B - $ 32.22 Total A and B - $ 62.06										
3	March, 1949	7 A	$ 521.56	1,350	402	12,060	483	35.8	64.2	$ 334.22	$ 187.34	35.9
		B	407.13	1,067	355	10,650	639	59.9	40.1	161.03	246.10	60.4
		Total A and B	928.69	2,417	757	22,710	1,122	46.4	53.6	495.25	433.44	46.7
		Average Claim Amount As Filed. . . Per Car A - $ 74.51 B - $ 58.16 Total A and B - $132.67										
		Average Revised Amount . . . . . Per Car A - $ 47.75 B - $ 23.00 Total A and B - $ 70.75										
		Difference . . . . . Per Car A - $ 26.76 B - $ 35.16 Total A and B - $ 61.92										

A - 4% Claim Cars
B - 6% Claim Cars

SUMMARY

COMBINATION { 4 / 6 PERCENT CLAIM CARS AT NEW YORK

Line	Col. 1	2	3	4	5	6	7	8 ✓	9	10	11	12
		Cars	Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damages	Total Dozens in Damaged Cases	Normal Expectancy 4% of "A" 6% of "B"	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference	Percent Difference of Claim Amount as Filed
1	April, 1949	13 A	$ 923.88	1,963½	683	20,490	819	41.7	58.3	$ 498.32	$ 425.56	46.1
		B	813.64	1,800	847	25,410	1,523	84.6	15.4	214.14	599.50	73.7
		Total A and B	1,737.52	3,763½	1,530	45,900	2,342	62.2	37.8	712.46	1,025.06	59.0
			Average Claim Amount As Filed. . .		Per Car	A - $ 71.06	B - $ 62.59	Total A and B - $133.65				
			Average Revised Amount		Per Car	A - $ 38.33	B - $ 16.47	Total A and B - $ 54.80				
			Difference		Per Car	A - $ 32.73	B - $ 46.12	Total A and B - $ 78.85				
2	May, 1949	21 A	$ 1,927.12	4,259½	1,432	42,960	1,717	40.3	59.7	$ 1,049.33	$ 877.79	45.5
		B	2,357.99	5,216½	1,701	51,030	3,060	58.7	41.3	872.27	1,485.72	63.0
		Total A and B	4,285.11	9,476	3,133	93,990	4,777	50.4	49.6	1,921.60	2,363.51	55.2
			Average Claim Amount As Filed. . .		Per Car	A - $ 91.77	B - $112.28	Total A and B - $204.05				
			Average Revised Amount		Per Car	A - $ 49.97	B - $ 41.53	Total A and B - $ 91.50				
			Difference		Per Car	A - $ 41.80	B - $ 70.75	Total A and B - $112.55				
3	June, 1949	27 A	$ 2,514.92	6,267	1,593	47,790	1,913	30.5	69.5	$ 1,643.56	$ 871.36	34.6
		B	5,220.63	12,243½	3,375	101,250	6,075	49.6	50.4	2,397.66	2,822.97	54.1
		Total A and B	7,735.55	18,510½	4,968	149,040	7,988	43.2	56.8	4,041.22	3,694.33	47.8
			Average Claim Amount As Filed. . .		Per Car	A - $ 93.14	B - $193.36	Total A and B - $286.50				
			Average Revised Amount		Per Car	A - $ 60.87	B - $ 88.80	Total A and B - $149.67				
			Difference		Per Car	A - $ 32.27	B - $104.56	Total A and B - $136.83				

A - 4% Claim Cars
B - 6% Claim Cars

SUMMARY

COMBINATION {4 6 PERCENT CLAIM CARS AT NEW YORK

Line	Col. 1	2	3	4	5	6	7	8	9	10	11	12
		Cars	Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens in Damaged Cases	Normal Expectancy 4% of "A" 6% of "B"	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference	Percent Difference of Claim Amount as Filed
1	July, 1949	23 A	$ 4,853.35	12,097	2,418	72.540	2 903	24.0	76.0	$ 3,380.72	$ 1,272.63	26.2
		B	3,371 03	9,038	1,580	47,400	2,843	31.5	68.5	2,215.61	1,155.42	34.3
		Total A and B	8,224.38	21.135	3,998	119,940	5,746	27.2	72.8	5,796.33	2,428.05	29.5
		Average Claim Amount As Filed . . .	Per Car	A - $211.01	B - $146.57	Total A and B - $357.58						
		Average Revised Amount	Per Car	A - $155.68	B - $ 96.33	Total A and B - $252.01						
		Difference	Per Car	A - $ 55.33	B - $ 50.24	Total A and B - $105.57						
2	Aug. 1949	15 A	$ 2,974.59	6,170	1,390	41,700	1,666	27.0	73.0	$ 2,018.13	$ 956.46	32.2
		B	3,187.50	7,064	1,210	36,300	2,178	30.8	69.2	2,030.40	1,157.10	36.3
		Total A and B	6,162.09	13,234	2,600	78,000	3,844	29.0	71.0	4,048.53	2,113.56	34.3
		Average Claim Amount As Filed. . .	Per Car	A - $198.30	B - $212.50	Total A and B - $410.80						
		Average Revised Amount	Per Car	A - $134.54	B - $135.36	Total A and B - $269.90						
		Difference	Per Car	A - $ 63.76	B - $ 77.14	Total A and B - $140.90						
3	Sept. 1949	14 A	$ 2,439.31	4,368½	1,318	39,540	1,582	36.2	63.8	$ 1,515.39	$ 923.92	37.9
		B	2,428.99	5,036½	1,204	36,120	2,167	43.0	57.0	1,292.33	1,136.66	46.8
		Total A and B	4,868.30	9,405	2,523	75,660	3,749	39.9	60.1	2,807.72	2,060.58	42.3
		Average Claim Amount As Filed. . .	Per Car	A - $174.23	B - $173.50	Total A and B - $347.73						
		Average Revised Amount	Per Car	A - $108.24	B - $ 92.31	Total A and B - $200.55						
		Difference	Per Car	A - $ 65.99	B - $ 81.19	Total A and B - $147.18						

A - 4% Claim Cars.
B - 6% Claim Cars.

SUMMARY

COMBINATION $\frac{4}{6}$ PERCENT CLAIM CARS AT NEW YORK

Line	Col. 1	2	3	4	5	6	7	8	9	10	11	12
		Cars	Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens in Damaged Cases	Normal Expectancy 4% of "A" 6% of "B"	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference	Percent Difference of Claim Amount as Filed
1	Oct. 1949	8 A	$ 501.03	1,195	330	9,900	396	33.1	66.9	$ 294.21	$ 206.82	41.3
		B	1,260.86	2,937	757	22,710	1,363	46.1	53.9	562.58	698.28	55.4
		Total A and B	1,761.89	4,152	1,087	32,610	1,759	42.4	57.6	856.79	905.10	51.4
		Average Claim Amount As Filed		Per Car	A - $ 62.63		B - $157.61		Total A and B - $220.24			
		Average Revised Amount		Per Car	A - $ 36.78		B - $ 70.32		Total A and B - $107.10			
		Difference		Per Car	A - $ 25.85		B - $ 87.29		Total A and B - $113.14			
2	Nov. 1949	7 A	$ 444.63	1,147	233	6,990	281	24.5	75.5	$ 330.50	$ 114.13	25.7
		B	986.68	2,577	467	14,010	841	32.6	67.4	649.35	317.33	32.8
		Total A and B	1,411.31	3,724	700	21,000	1,122	30.1	69.9	979.85	431.46	30.6
		Average Claim Amount As Filed		Per Car	A - $ 63.52		B - $138.09		Total A and B - $201.61			
		Average Revised Amount		Per Car	A - $ 47.22		B - $ 92.76		Total A and B - $139.98			
		Difference		Per Car	A - $ 16.30		B - $ 45.33		Total A and B - $ 61.63			
3	Dec. 1949	10 A	$ 531.60	1,890	335	10,050	401	21.2	78.8	$ 416.86	$ 114.74	21.6
		B	1,456.44	4,874	966	28,980	1,740	35.7	64.3	933.45	522.99	35.9
		Total A and B	1,988.04	6,764	1,301	39,030	2,141	31.7	68.3	1,350.31	637.73	32.1
		Average Claim Amount As Filed		Per Car	A - $ 53.16		B - $145.64		Total A and B - $198.80			
		Average Revised Amount		Per Car	A - $ 41.69		B - $ 93.34		Total A and B - $135.03			
		Difference		Per Car	A - $ 11.47		B - $ 52.30		Total A and B - $ 63.77			

A - 4% Claim Cars
B - 6% Claim Cars

SUMMARY

COMBINATION, {4 6 PERCENT CLAIM CARS AT NEW YORK

JANUARY 1950 TO JUNE 1950

Line	Col. 1	2	3	4	5	6	7	8	9	10	11	12
		Cars	Claim Amount as Filed	Total Damage Claim Dozens	Total Cases Damaged	Total Dozens in Damaged Cases	Normal Expectancy 4% of "A" 6% of "B"	Percent Col. 7 of Col. 4	Liability Percentage 100% Minus % Col. 8	Revised Amount of Claim	Difference	Percent Difference of Claim Amount as Filed
1	Jan. 1950	7 A	$ 478.58	1,581	275	8,250	331	20.9	79.1	$ 384.70	$ 93.88	19.6
		B	1,212.94	4,440	898	26,940	1,616	36.4	63.6	778.26	434.68	35.8
		Total A and B	1,691.52	6,021	1,173	35,190	1,947	32.3	67.7	1,162.96	528.56	31.2
		Average Claim Amount As Filed. . . Per Car A - $ 68.37 B - $173.28 Total A and B - $241.65										
		Average Revised Amount . . . . . Per Car A - $ 54.96 B - $111.18 Total A and B - $166.14										
		Difference . . . . . Per Car A - $ 13.41 B - $ 62.10 Total A and B - $ 75.51										
2	Feb. 1950	7 A	$ 392.78	1,425	317	9,510	380	26.7	73.3	$ 284.25	$ 108.53	27.6
		B	989.28	3,903	783	23,490	1,410	36.1	63.9	631.05	358.23	36.2
		Total A and B	1,382.06	5,328	1,100	33,000	1,790	33.6	66.4	915.30	466.76	33.8
		Average Claim Amount As Filed. . . Per Car A - $ 56.11 B - $141.33 Total A and B - $197.44										
		Average Revised Amount . . . . . Per Car A - $ 40.61 B - $ 90.15 Total A and B - $130.76										
		Difference . . . . . Per Car A - $ 15.50 B - $ 51.18 Total A and B - 66.68										
3	Mar. 1950	6 A	$ 380.45	1,252	292	8,760	350	28.0	72.0	$ 271.26	$ 109.19	28.7
		B	950.96	3,319	695	20,850	1,250	37.7	62.3	592.31	358.65	37.7
		Total A and B	1,331.41	4,571	987	29,610	1,600	35.0	65.0	863.57	467.84	35.1
		Average Claim Amount As Filed. . . Per Car A - $ 63.41 B - $158.49 Total A and B - $221.90										
		Average Revised Amount . . . . . Per Car A - $ 45.21 B - $ 98.72 Total A and B - $143.93										
		Difference . . . . . Per Car A - $ 18.20 B - $ 59.77 Total A and B - $ 77.97										

A - 4% Claim Cars
B - 6% Claim Cars

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SUMMARY

COMBINATION { 4 / 6 } PERCENT CLAIM CARS AT NEW YORK

Line	Col. 1	2 Cars	3 Claim Amount as Filed	4 Total Damage Claim Dozens	5 Total Cases Damaged	6 Total Dozens in Damaged Cases	7 Normal Expectancy 4% of "A" 6% of "B"	8 Percent Col. 7 of Col. 4	9 Liability Percentage 100% Minus % Col. 8	10 Revised Amount of Claim	11 Difference	12 Percent Difference of Claim Amount as Filed
1	April 1950:	6 A	$ 365.80	1,216	275	8,250	331	27.2	72.8	$ 265.20	$ 100.60	27.5
		B	878.00	2,927	622	18,660	1,119	38.2	61.8	541.20	336.80	38.4
		Total A and B	1,243.80	4,143	897	26,910	1,450	35.0	65.0	806.40	437.40	35.2
		Average Claim Amount As Filed . . . Per Car	A - $ 60.97	B - $146.33	Total A and B - $207.30							
		Average Revised Amount . . . . . Per Car	A - $ 44.20	B - $ 90.20	Total A and B - $134.40							
		Difference . . . . . Per Car	A - $ 16.77	B - $ 56.13	Total A and B - $ 72.90							
2	May 1950.	2 A	$ 225.54	742	200	6,000	240	32.3	67.7	$ 152.09	$ 73.45	32.6
		B	64.51	212	59	1,770	106	50.0	50.0	32.05	32.46	50.3
		Total A and B	290.05	954	259	7,770	346	36.3	63.7	184.14	105.91	36.5
		Average Claim Amount As Filed. . . Per Car	A - $112.77	B - $ 32.26	Total A and B - $145.03							
		Average Revised Amount . . . . . Per Car	A - $ 76.04	B - $ 16.03	Total A and B - $ 92.07							
		Difference . . . . . Per Car	A - $ 36.73	B - $ 16.23	Total A and B - $ 52.96							
3	June 1950	NONE										
4	Jan. 1950 to June 1950.	28 A	$ 1,843.15	6,216	1,359	40,770	1,632	26.3	74.7	$ 1,357.50	$ 485.65	26.3
		B	4,095.69	14,801	3,057	91,710	5,501	37.2	62.8	2,574.87	1,520.82	37.1
		Total A and B	5,938.84	21,017	4,416	132,480	7,133	33.9	66.1	3,932.37	2,006.47	33.8
		Average Claim Amount As Filed . . Per Car	A - $ 65.83	B - $146.27	Total A and B - $212.10							
		Average Revised Amount . . . . . Per Car	A - $ 48.48	B - $ 91.96	Total A and B - $140.44							
		Difference . . . . . Per Car	A - $ 17.35	B - $ 54.31	Total A and B - $ 71.66							

A - 4% Claim Cars
B - 6% Claim Cars

DAMAGE OF RECORD IN CARS OF SHELL EGGS INSPECTED AT NEW YORK

YEAR	CARS	CASES SHIPPED	BAD ORDER CASES	DOZENS DAMAGED IN BAD ORDER CASES
1947	7770	4,069,210	921,620 22.65%	3,333,368 12.06%
1948	5560	2,882,527	543,251 18.85%	1,741,788 10.69%
1949	2693	1,163,207	261,462 22.48%	916,097 11.68%
1950 Jan. 1 to June 30	701	279,488	55,180 19.74%	191,150 11.55%

ICC DOCKET NO. 30030
EXHIBIT NO 53
WITNESS W. S. JENSEN

September 7, 1950

[fol. 195] I. C. C. DOCKET No. 30030

EXHIBIT 54

WITNESS: W. S. JENSEN

PAGE 1 OF 2 PAGES

UNITED STATES DEPARTMENT OF AGRICULTURE

Production and Marketing Administration
Poultry Branch
Washington 25, D. C.
August 1, 1950

Market News Officials
Dairy and Poultry Inspection Supervisors
PMA State Committee Chairmen
Members State Colleges of Agriculture
Members State Departments of Agriculture
Poultry Industry and Manufacturing Assns.
Poultry Industry Advisory Committee
its Task and Subtask Groups

Gentlemen:

Enclosed is a fact sheet on changes in cases, flats and fillers for eggs which have been developed during the past two years in cooperation with the Poultry and Egg Packaging Task Group of the Poultry Industry Advisory Committee. The purpose in sending this fact sheet is to acquaint all segments of the poultry industry with the changes that are being made in egg cases and packing materials and to urge that the procedure outlined in the fact sheet be followed very closely.

We shall appreciate your giving this information as much publicity as you can so that there will be as little difficulty as possible during the transition period.

Sincerely yours, MELVIN W. BUSTER, Chief,
Marketing Services Division Poultry Branch.

Enclosure.

[fol. 195a] UNITED STATES DEPARTMENT OF AGRICULTURE

Production and Marketing Administration
Washington, D. C.

July, 1950

Fact Sheet on the New Cases, Flats, and Fillers for Eggs

Now that industry has decided that larger egg cases and packaging materials are needed and has cooperated with the U. S. Department of Agriculture in setting up new size standards, the problem of changing over from the old to the new arises.

The major reason for this change is to reduce losses in eggs through shipping. Tests, conducted repeatedly by the Poultry Branch, Production and Marketing Administration, USDA, and by the industry itself, have indicated that "standard" egg cases and inner packing materials now in general use are among the causes contributing to such losses, for the reason that eggs today don't fit because they average slightly larger than they did a few years ago.

What Egg Case Users Should Do Now.

1. Buy only new-style egg cases and fillers. These are known by the manufacturers and distributors as "regular" egg cases and fillers. Remember, the increased size of the new-style cases, fillers, and flats should add little, if any, to the cost of these items.
2. After October 1, 1950, specify "regular" flats when making purchases. This will assure your obtaining new style flats when they are available in quantity.
3. Keep old-style flats on hand for use during the coming packing season, for use with old standard egg cases still in circulation.
4. Help yourself and the industry at large to cut down egg losses by changing over to new-style cases and packing materials as soon as possible. The manufacturers of these materials have agreed to make them available during the 1951 egg-packing season. Estimates show that average savings from decreased losses occurring in transit, through the use of the new-style cases and packing materials, may amount to as much as $48 or more per carload of eggs.

NOTE to PMA Area Information Officers, PMA State Committee Chairmen, Extension Service Editors, Poultry Industry and Manufacturing Associations, and members of the Poultry Industry Advisory and its Task Groups:

(This material is intended for your background use in the preparation of press and radio releases needed to advise users of egg cases and packing materials to change over from the old to the new styles. It is not intended for direct distribution to these users.)

[fol. 196] The change-over, necessarily, must be a gradual one. However, the sooner it is accomplished, the sooner the entire industry, from the producer to the retailer, will benefit. The change itself need not be confusing if the physical changes in cases and packing materials are clearly understood, and if they can be acquired as needed.

Here is the story—in an egg shell: The new cases, made either of fiber board or wood, are deeper than the old-style cases; new standard egg case fillers are the same over-all size as the old standard fillers, but the filler cells are slightly larger; new standard (regular) egg flats are the same length and width as the old, but they have longer posts to protect longer eggs.

Perhaps the safest and least confusing method of change-over is to buy the new standard fillers as they are needed for replacements. These are being produced now and it is important to keep in mind that they may be used in the cases of the old standard size (except those made to standards before 1946.)

The new standard flats will be on the market about October 1, 1950, and should be available in some quantity during the 1951 egg-packing season. It should be remembered, however, that the new flats, because of the longer posts, require egg cases that are at least 13 inches deep—the new standard depth. This means that the new flats cannot be used in old-style cases, which measure only 12½ to 12¾ inches deep. Many fiber cases now in use have the proper depth, however, and wooden cases of the new standard depth also may be obtained.

What Started This?

Science started it. Almost 20 years of breeding for improved chickens produced better layers and larger eggs. Since it is better to go forward than to go backward, industry and the U. S. Department of Agriculture decided that it would be more logical to increase the size of egg cases and inner packing materials than to attempt to decrease the size of eggs.

The work of developing new standards and sizes began about 5 years ago. Working closely with the Poultry Branch during most of this period has been the Shell Egg Packaging Substask Group. This group, which reports to the Poultry and Egg Packaging Task Group, is made up of representatives of nearly every segment of the poultry industry, either directly or indirectly connected. It contains not only producer and distribution representatives, but manufacturers of egg case and inner packaging materials, representatives of truck lines, railroads, poultry marketing specialists, and officials of State departments of agriculture.

The new size standards for egg cases and packing materials were formulated after many months of effort. These new standards were approved by the U. S. Department of Agriculture and announced in January 1950 as the "Recommended Specifications for Standard Packages and Packs for Shell Eggs," to be made effective beginning July 1, 1950. [fol. 196a] The work of this group and of the Poultry Branch has been carried on with the cooperation of industry at large in an effort to solve a part of the problem of losses in handling eggs between the farmer and the consumer.

Losses Through Breakage Substantial.

Studies have been conducted by the Poultry Branch in connection with the development of new standards and specifications for egg cases and packing materials. This has demonstrated conclusively that larger egg cases and packing materials will reduce losses, due to damaged shells, now encountered in shipping eggs by rail or truck and some of the losses now chargeable to careless packing and han-

dling and use of cases and packing materials which are too small for the product.

The studies made to determine whether eggs produced today actually average larger than those produced a few years ago were based on measurements of a total of some 16,000 eggs. They were made in the fall of 1946 and in the spring of 1948. Included were white and brown eggs from the East and Midwest, both in current receipt and graded lots.

Comparison of these measurements with measurements taken in 1946 shows definitely that *eggs have "grown."* In 1917, about 2¼ inches of height was allowed in fillers and flats to accommodate the length of the average egg. Today fillers and flats must allow at least 2 7/16 inches of height to accommodate the bulk of the eggs packed. Also cells of the fillers must be larger to make room for *the growing waist line of the 1950 egg as* compared with that of the 1917 egg.

[fol. 137]

SCHEDULE No. 1

EXHIBIT No. 59

Witness: Winters

Total Car Lots of Eggs Received
May 1, 1950–July 22, 1950
Zenith Godley Co., Inc., New York

Car Number	Condition New York NY	Point of Origin	Delivery Carrier
NWX 3242	Bad Order	Clarion, Iowa	Erie
ART 24450	Bad Order	Tripoli, Iowa	B & O
ART 18132	Good Order	Tripoli, Iowa	B & O
NWX 1115	Good Order	Iowa Falls, Iowa	B & O
URT 11501	Bad Order	Tripoli, Iowa	Erie
URT 5037	Good Order	Tripoli, Iowa	Erie
SFRD 32532	Bad Order	Clarion, Iowa	B & O
SFRD 10292	Bad Order	Clarion, Iowa	Erie
URT 7120	Bad Order	Tripoli, Iowa	B & O
URT 35568	Bad Order	Tripoli, Iowa	B & O
NWX 2734	Good Order	Iowa Falls, Iowa	B & O
ART 15442	Bad Order	Iowa Falls, Iowa	N.Y.C.
NWX 1166	Good Order	Iowa Falls, Iowa	Erie
URT 11309	Bad Order	Tripoli, Iowa	Erie
MUNX 3306	Bad Order	Clarion, Iowa	B & O
URT 1019	Bad Order	Tripoli, Iowa	N.Y.C.
NWX 4556	Good Order	Iowa Falls, Iowa	Erie
MCLX 70028	Good Order	Iowa Falls, Iowa	Erie
URT 35057	Bad Order	Tripoli, Iowa	B & O
URT 1039	Good Order	Tripoli, Iowa	B & O
MUNX 3341	Bad Order	Clarion, Iowa	Erie
URT 7164	Bad Order	Tripoli, Iowa	Erie
URT 5000	Good Order	Tripoli, Iowa	Erie
BREX 75469	Bad Order	Clarion, Iowa	B & O
FGE 51476	Good Order	Clarion, Iowa	Erie
URT 5099	Bad Order	Tripoli, Iowa	B & O
URT 27299	Good Order	Tripoli, Iowa	B & O
NWX 2417	Good Order	Iowa Falls, Iowa	B & O
MCLX 70000	Good Order	Iowa Falls, Iowa	Erie
URT 8045	Good Order	Tripoli, Iowa	Erie
URT 5079	Bad Order	Tripoli, Iowa	Erie
NP 91139	Bad Order	Clarion, Iowa	B & O
URT 7411	Bad Order	Tripoli, Iowa	B & O
MUNX 3388	Bad Order	Clarion, Iowa	Erie
NWX 70293	Good Order	Iowa Falls, Iowa	B & O
NWX 2824	Good Order	Iowa Falls, Iowa	Erie
URT 7421	Bad Order	Tripoli, Iowa	Erie
URT 5072	Good Order	Tripoli, Iowa	Erie
NWX 70282	Bad Order	Iowa Falls, Iowa	Erie
NRC 17057	Bad Order	Clarion, Iowa	Erie
URT 81225	Bad Order	Tripoli, Iowa	B & O
URT 9132	Good Order	Tripoli, Iowa	B & O
NP 92849	Good Order	Clarion, Iowa	Erie
NCL 70355	Bad Order	Iowa Falls, Iowa	B & O
URT 7271	Bad Order	Tripoli, Iowa	Erie
URT 5043	Bad Order	Tripoli, Iowa	Erie
WFE 62559	Good Order	Clarion, Iowa	Erie

[fol. 198]

Car Number	Condition New York NY	Point of Origin	Delivery Carrier
NXW 70068	Bad Order	Iowa Falls, Iowa	Erie
URT 81240	Bad Order	Tripoli, Iowa	B & O
URT 1010	Good Order	Tripoli, Iowa	B & O
SFRD 35284	Bad Order	Clarion, Iowa	B & O
NWX 2406	Good Order	Iowa Falls, Iowa	B & O
URT 35624	Good Order	Tripoli, Iowa	Erie
URT 7751	Bad Order	Tripoli, Iowa	Erie
MCL 70120	Good Order	Clarion, Iowa	Erie
URT 5051	Good Order	Tripoli, Iowa	B & O
SFRD 31626	Bad Order	Tripoli, Iowa	B & O
MCL 70354	Bad Order	Iowa Falls, Iowa	Erie
NWX 2333	Bad Order	Iowa Falls, Iowa	Erie
NWX 4502	Bad Order	Tripoli, Iowa	B & O
NWX 2740	Good Order	Clarion, Iowa	Erie
NWX 2805	Bad Order	Tripoli, Iowa	Erie
NWX 2446	Good Order	Tripoli, Iowa	Erie
NWX 3923	Bad Order	Clarion, Iowa	Erie
NWX 70469	Bad Order	Tripoli, Iowa	B & O
NWX 2729	Bad Order	Clarion, Iowa	Erie
SFRD 25185	Good Order	Tripoli, Iowa	Erie
NWX 70084	Bad Order	Iowa Falls, Iowa	Erie
FGE 39018	Good Order	Clarion, Iowa	Erie
URT 5097	Good Order	Tripoli, Iowa	B & O
URT 35506	Bad Order	Tripoli, Iowa	B & O
NWX 2777	Bad Order	Iowa Falls, Iowa	Erie
URT 8207	Good Order	Tripoli, Iowa	Erie
SFRD 7099	Bad Order	Clarion, Iowa	B & O
URT 8659	Bad Order	Tripoli, Iowa	Erie
URT 1000	Bad Order	Tripoli, Iowa	B & O
URT 35356	Bad Order	Clarion, Iowa	Erie
URT 5644	Good Order	Tripoli, Iowa	Erie
URT 86659	Good Order	Tripoli, Iowa	Erie
NWX 3927	Bad Order	Iowa Falls, Iowa	Erie

[fol. 199] Schedule No. 2

Analysis

Total Cars Received

Zenith Godley Co., Inc., New York, N. Y.

Railroad	Cars Received in Good Order	Cars Received Bad Order	Total Cars Received
B & O	12	20	32
Erie	21	25	46
N. Y. C.	0	2	2
Totals	33	47	80

Point of Origin	Cars Received in Good Order	Cars Received in Bad Order	Total Cars Shipped
Tripli, Iowa	18	23	41
Clarion, Iowa	5	15	20
Iowa Falls, Iowa	10	9	19
Totals	33	47	80

[fol. 200] Schedule No. 3

Cars Received by Zenith Godley Co., Inc. in Good Order and Inspected at Destination by U. S. Department of Agriculture

USDA Inspection Number	Point of Origin	Delivering RR	Date Inspected	Total % Stains Checks & Loss	Car No.
291429	Tripoli, Iowa	B & O	5/31/50	5.8	URT 27299
291423	Clarion, Iowa	Erie	5/31/50	3.9	FGE 51476
291533	Tripoli, Iowa	Erie	6/ 8/50	17.0	URT 5072
291551	Iowa Falls, Ia.	B & O	6/ 8/50	15.0	NWX 70293
291617	Clarion, Iowa	Erie	6/12/50	2.6	NP 92849
291662	Tripoli, Iowa	B & O	6/20/50	8.8	URT 1010
291730	Clarion, Iowa	Erie	6/20/50	3.2	WFE 62559
291774	Iowa Falls, Ia.	B & O	6/22/50	5.1	NWX 2406
291829	Clarion, Iowa	Erie	6/26/50	5.4	MCL 70120
291773	Tripoli, Iowa	B & O	6/27/50	6.4	URT 5051
				73.2	
		Average		7.3	

Cars Received in Bad Order by Zenith Godley Co., Inc. and Inspected *after* Re-Conditioning by U. S. Department of Agriculture

USDA Inspection	Point of Origin	Delivering RR	Date Inspected	Total % Stains Checks & Loss	Car No.
291534	Tripoli, Iowa	Erie	6/ 8/50	15.2	URT 7421
291650	Iowa Falls, Ia.	B & O	6/15/50	3.6	MCL 70355
291696	Clarion, Iowa	B & O	6/20/50	7.6	URT 81240
291729	Iowa Falls, Ia.	Erie	6/20/50	4.4	NWX 70068
291783	Tripoli, Iowa	B & O	6/27/50	6.2	SFRD 31626
291926	Tripoli, Iowa	Erie	7/ 5/50	7.4	NWX 2805
291983	Clarion, Iowa	Erie	7/11/50	7.0	NWX 2729
291982	Tripoli, Iowa	B & O	7/11/50	4.7	NWX 70469
				56.1	
		Average		7.0	

EXHIBIT OF SWIFT & COMPANY

I & S DOCKET 5792

EGG TOLERANCE RULES

Explanation of Exhibit

Page 1	Present and suspended rules
Page 2	Statement of dairy products movement and egg claims
Page 3	Statement of Swift egg shipments and claims
Pages 4 to 10	Statement of Swift & Company individual claims
Pages 11 to 14	Statement of Swift & Company individual claims on rehandled and repacked eggs refigured to reflect suspended tolerance basis
Page 15	Statement of present rates on dairy products and rates effective September 11, 1950
Page 16	Statement of carriers total tons, revenues and claims 1941 to 1949

STATEMENT SHOWING PRESENT AND SUSPENDED TOLERANCE RULES ON EGGS CONSOLIDATED CLASSIFICATION 19

Eggs and Packing	Present Tolerance Rule	Suspended Tolerance Rule
Section 6 Item 14586 14586-A	5%-all eggs except storage packed and Rehandled and Repacked	4%-all eggs placed in packages at rail point of origin, except where Federal or State Inspection Certificate shows damage in case to be other than 3% such percent plus 1% shall be used as the tolerance.
Section 7 Item 14587 14587-A	None However 5% tolerance applies now on eggs placed in packages at other than rail origin also current receipts - See Item 14586	6%-eggs placed in packages at other than rail point of origin except where Federal or State Certificates at rail origin show other than 6% damage the tolerance will be such damage plus 1%
Section 1 Item 14565 14565-A	Term Rehandled and Repacked also storage packed eggs in Paragraphs A and B, Graded eggs and Current Receipts in Paragraph C	None

Consolidated Classification 19 and Supplement 7
Greenly ICC OC 63 - Boyle ICC 107 - Dumas ICC 32 - Raasch ICC 685

STATEMENT OF MOVEMENT OF EGGS AND REVENUE FOR VARIOUS YEARS 1945 TO 1949 WITH CLAIM PAYMENTS

Year	Number of Carloads	Revenue	Claims Unlocated Damage	Percent Claims Paid are of Total Revenue
	Eggs CL			
1945	43,590	12,440,905	1,151,215	9.2
1946	38,530	11,527,115	1,982,742	17.2
1947	26,800	10,585,213	2,067,142	19.5
1948	21,424	9,641,928	1,801,006	18.7
1949	9,037	3,945,047	1,183,236	30.0

TOTAL CARS OF EGGS, BUTTER AND DRESSED POULTRY ORIGINATED BY CLASS 1 RAILROADS 1945 TO 1949

Year	Eggs		Butter		Poultry		Total	
	Cars	Revenue	Cars	Revenue	Cars	Revenue	Cars	Revenue
1945	43,590	$12,440,905	27,975	$8,985,963	33,675	$10,582,504	105,240	$32,009,372
1946	38,530	11,527,115	18,800	6,114,886	29,509	10,287,681	86,839	27,929,682
1947	26,800	10,585,213	21,029	7,746,823	21,675	9,235,058	69,504	27,567,084
1948	21,424	9,641,928	16,632	7,295,318	14,131	7,818,671	52,187	24,755,917
1949	9,037	3,945,047	17,022	6,759,484	11,873	7,121,963	37,932	17,826,494

Statistics taken from reports of Interstate Commerce Commission.

STATEMENT SHOWING RAIL SHIPMENTS OF EGGS IN STRAIGHT CARLOADS AND IN MIXED CARS WITH OTHER DAIRY PRODUCTS BY SWIFT & COMPANY IN 1949 ALSO 5 MONTHS OF 1950

	1949	First 5 Months of 1950	1948
Straight carloads of Eggs	974	249	1970

1948 cars shipped taken from Exhibit 37, ICC Docket 30030

AVERAGE OF CLAIMS FILED BY SWIFT & COMPANY FOR 1948 AND 1949 COVERING EGGS SHIPPED IN THOSE YEARS

	1948	1949
Straight cars of eggs shipped	1970	974
Claims filed for damage these shipments	296	157
Average amount per claim	$207.23	(1) 164.64
Average claim per car shipped using only straight carloads	$ 31.13	(1) 26.54

(1) Does not include 1 frozen car and 2 market damage claims.

STATEMENT OF CLAIMS FILED ON 1949 SHIPMENTS OF SHELL EGGS BY SWIFT & COMPANY

CLAIM NUMBER	DATE SHIPPED	CAR INITIAL AND NUMBER	FROM	TO	CONTENTS OF CAR	#RATE (CENTS PER CWT.)	REVENUE PER CAR (DOLLARS)	CASES DAMAGED	DOZEN DAMAGED	AMOUNT OF CLAIM (DOLLARS)
GO-42696	5-27-49	SRLX 4416	Algona, Iowa	Boston, Mass.	416 cs. RH&RP Eggs	182	401.27	6	180	27.20
GO-41068	5-11-49	NWX 70417	Atlantic, Iowa	Fresh Pond, N.Y.	480 cs. RH&RP Eggs	180	457.92	265	600	297.24
GO-45043	8-6-49	SRLX 4923	Atlantic, Iowa	Baltimore, Md.	400 cs. RH&RP Eggs	169	358.28	56	666	213.22
GO-39492	4-14-49	SRLX 4249	Beatrice, Nebr.	Chicago, Ill.	480 cs. RH&RP Eggs	98	249.31	27	30	43.42
GO-43714	5-21-49	PFE 52252	Beatrice, Nebr.	Chicago, Ill.	480 cs. RH&RP Eggs	98	249.31	112	150	198.30
GO-42360	8-11-49	PFE 66527	Beatrice, Nebr.	Fort Bragg, N.C.	600 cs. RH&RP Eggs	214	680.52	12	360	207.76
GO-46702	9-7-49	PFE 46728	Beatrice, Nebr.	Ft. Jackson, S.C.	680 cs. RH&RP Eggs	222	705.96	120	638	299.70
GO-42363	10-4-49	PFE 43772	Beatrice, Nebr.	Seattle, Wash.	600 cs. RH&RP Eggs	194	616.92	3	90	57.12
GO-42362	10-19-49	PFE 65763	Beatrice, Nebr.	Seattle, Wash.	600 cs. Graded Eggs	194	616.92	1	(G) 28½	18.11
GO-42361	10-15-49	PFE 40345	Beatrice, Nebr.	Bayonne, N.J.	600 cs. Graded Eggs	209	664.62	13	390	245.74
GO-36373	3-25-49	BREX 75474	Breckenridge, Minn.	Chicago, Ill.	480 cs. RH&RP Eggs	101	256.94	14	30	27.18
GO-44624	7-8-49	NWX 1581	Chicago, Ill.	Fresh Pond, N.Y.	480 cs. RH&RP Eggs	138	351.07	314	2308	685.54
GO-44346	9-13-49	MARX 2041	Chicago, Ill.	New York, N.Y.	446 cs. RH&RP Eggs	138	326.20	337	1140	667.15
GO-41726	9-19-49	SRLX 5150	Chicago, Ill.	Washington, D.C.	438 cs. RH&RP Eggs	133	308.69	4	75	22.79
GO-44345	7-19-49	NWX 3240	Chicago, Ill.	Washington, D.C.	480 cs. RH&RP Eggs	128	325.63	13	142	69.63
GO-46019	8-19-49	SRLX 3780	Chicago, Ill.	Raleigh, N.C.	480 cs. RH&RP Eggs	146	371.42	15	60	35.75
GO-42190	8-11-49	SRLX 6656	Chicago, Ill.	Louisville, Ky.	89 cs. Graded Eggs	80	37.74	20	(G) 5	64.21
GO-41894	9-22-49	SRLX 4217	Chicago, Ill.	Norfolk, Va.	480 cs. RH&RP Eggs	143	363.79	4	41	20.13
GO-43947	12-1-49	SRLX 7347	Chicago, Ill.	Northfork, W.Va.	100 cs. Graded Eggs	111	58.83	21	(G) 6½	37.94
GO-44631	12-6-49	GARX 65041	Chicago, Ill.	Petoskey, Mich.	26 cs. RH&RP Eggs (mixed car)	91	12.54	2	25	11.70
GO-37827	1-20-49	GARX 90604	Clinton, Iowa	Norfolk, Va.	533 cs. Graded Eggs	151	426.56	345	570	314.52
GO-42853	9-9-49	SRLX 6703	Clinton, Iowa	Norfolk, Va.	500 cs. RH&RP Eggs	156	413.40	3	38	18.30
GO-42164	8-5-49	SRLX 4776	Clinton, Iowa	Port Morris, N.Y.	480 cs. RH&RP Eggs	152	386.69	45	465	125.05
GO-42252	9-29-49	SRLX 4821	Clinton, Iowa	Rochester, N.Y.	480 cs. RH&RP Eggs	128	324.63	33	33	9.64
GO-41810	8-8-49	SRLX 2511	Clinton, Iowa	Hartford, Conn.	480 cs. RH&RP Eggs	152	386.69	10	90	21.57
GO-41811	8-8-49	SRLX 4728	Clinton, Iowa	Providence, R.I.	480 cs. RH&RP Eggs	156	369.86	21	148	84.26
GO-42194	9-3-49	SRLX 4016	Clinton, Iowa	Philadelphia, Pa.	480 cs. RH&RP Eggs	151	384.14	76	729	335.61
GO-47359	9-7-49	SRLX 4807	Clinton, Iowa	Atlanta, Ga.	480 cs. RH&RP Eggs 20 cs. Graded Eggs	177	466.05	500	15000	3534.18
GO-41809	9-8-49	SRLX 4661	Clinton, Iowa	Greensboro, N.C.	480 cs. RH&RP Eggs	155	394.32	15	69	31.92
GO-37787	1-20-49	PFE 67817	Clay Center, Kans.	New Orleans, La.	520 cs. RH&RP Eggs	151	416.16	3	30	5.70

In instances where freight charges were subject to interim increase under X-168, rates were increased by E.C. rather than charges. This may result in differences of a few cents in some revenue items.

(G) Graded Eggs - Tolerance of 5% Deducted - All or part of eggs shown as damaged.

CLAIM NUMBER	DATE SHIPPED	CAR INITIAL AND NUMBER	FROM	TO	CONTENTS OF CAR	#RATE (CENTS PER CWT.)	REVENUE PER CAR (DOLLARS)	CASES DAMAGED	DOZEN DAMAGED	AMOUNT OF CLAIM (DOLLARS)
GO-40554	3-9-49	SRLX 6158	Clay Center, Kans.	New Orleans, La.	420 cs. RH&RP Eggs	151	336.13	5	60	11.10
GO-40411	3-17-49	SRLX 4187	Clay Center, Kans.	New Orleans, La.	416 cs. RH&RP Eggs	151	332.92	4	30	5.85
GO-41387	5-7-49	SFRD 14700	Columbus, Nebr.	Wilmington, N.C.	600 cs. RH&RP Eggs	229	728.22	39	186	86.05
GO-42365	10-14-49	PFE 43822	Columbus, Nebr.	Williamsburg, Va.	600 cs. RH&RP Eggs	204	648.72	3	90	56.96
GO-42124	4-22-49	SRLX 6297	Creston, Iowa	Shenandoah, Pa.	52 cs. RH&RP Eggs (mixed car)	166	45.75	11	63	34.49
GO-41753	6-22-49	SRLX 5159	Creston, Iowa	Reading, Pa.	56 cs. RH&RP Eggs (mixed car)	166	49.27	15	35	13.30
GO-36483	2-15-49	NWX 70080	Detroit Lakes, Minn.	Chicago, Ill.	480 cs. RH&RP Eggs	98	248.31	127	300	309.25
GO-44620	9-30-49	MDT 45903	Detroit Lakes, Minn.	Chicago, Ill.	117 cs. RH&RP Eggs 363 cs. Graded Eggs	101	256.94	71	(G) 678½	208.99
GO-40537	5-26-49	SRLX 5800	Detroit Lakes, Minn.	Hartford, Conn.	90 cs. RH&RP Eggs 326 cs. Graded Eggs	207	456.39	32	315	86.25
GO-40534	5-26-49	SRLX 6069	Detroit Lakes, Minn.	Baltimore, Md.	27 cs. RH&RP Eggs 73 cs. Graded Eggs (mixed car)	203	107.59	62	481	193.76
GO-40535	6-8-49	SRLX 5924	Detroit Lakes, Minn.	Baltimore, Md.	50 cs. RH&RP Eggs (mixed car)	203	53.80	11	112	48.55
GO-41358	7-6-49	SRLX 4794	Detroit Lakes, Minn.	Baltimore, Md.	50 cs. RH&RP Eggs 50 cs. Graded Eggs (mixed car)	203	107.59	49	618	330.21
GO-42997	10-12-49	SRLX 4591	Detroit Lakes, Minn.	Baltimore, Md.	12 cs. RH&RP Eggs 88 cs. Graded Eggs (mixed car)	210	111.30	8	(G) 42	22.26
GO-44619	10-19-49	SRLX 5008	Detroit Lakes, Minn.	Baltimore, Md.	32 cs. RH&RP Eggs 68 cs. Graded Eggs (mixed car)	210	111.30	9	(G) 51	30.20
GO-42995	9-15-49	SRLX 4328	Detroit Lakes, Minn.	Baltimore, Md.	31 cs. RH&RP Eggs 69 cs. Graded Eggs (mixed car)	210	34.50	6	(G) 47	25.68
GO-42340	7-8-49	SRLX 4446	Detroit Lakes, Minn.	Norfolk, Va.	26 cs. RH&RP Eggs 390 cs. Graded Eggs	215	29.62	32	(G) 122	62.08
GO-40538	5-28-49	SRLX 5745	Detroit Lakes, Minn.	Boston, Mass.	140 cs. RH&RP Eggs 380 cs. Graded Eggs	215	592.54	2	60	13.84
GO-43959	6-2-49	NRC 18306	Detroit Lakes, Minn.	Port Morris, N.Y.	232 cs. RH&RP Eggs 368 cs. Graded Eggs	207	658.26	344	(G) 516	288.30
GO-42996	6-24-49	SRLX 5244	Detroit Lakes, Minn.	Philadelphia, Pa.	134 cs. RH&RP Eggs 314 cs. Graded Eggs	207	498.50	130	(G) 1271½	484.58
GO-42998	9-27-49	PFE 40723	Detroit Lakes, Minn.	Philadelphia, Pa.	186 cs. RH&RP Eggs 294 cs. Graded Eggs	215	546.96	186	(G) 279	391.05

In instances where freight charges were subject to interim increase under X-168, rates were increased by E.C. rather than charges. This may result in differences of a few cents in some revenue items.

(G) Graded Eggs - Tolerance of 5% Deducted - All or part of eggs shown as damaged.

CLAIM NUMBER	DATE SHIPPED	CAR INITIAL AND NUMBER	FROM	TO	CONTENTS OF CAR	#RATE (CENTS PER CWT.)	REVENUE PER CAR (DOLLARS)	CASES DAMAGED	DOZEN DAMAGED	AMOUNT OF CLAIM (DOLLARS)
GO-39443	3-16-49	FGE 55904	Fosston, Minn.	Baltimore, Md.	512 cs. RH&RP Eggs	212	575.28	21	93	42.98
GO-40563	3-28-49	WFE 61118	Fosston, Minn.	Kensington, Pa.	512 cs. RH&RP Eggs	216	586.14	24	113	49.31
GO-37865	2-14-49	SRLX 4727	Grinnell, Iowa	Hartford, Conn.	281 cs. RH&RP Eggs 199 cs. Graded Eggs	159	404.50	10	270	19.40
GO-37866	4-29-49	GARX 67820	Grinnell, Iowa	Newark, N.J.	280 cs. RH&RP Eggs 200 cs. Graded Eggs	158	401.95	60	326	127.58
GO-43449	5-11-49	SRLX 6835	Grinnell, Iowa	Newark, N.J.	140 cs. RH&RP Eggs 340 cs. Graded Eggs	158	401.95	236	240	178.45
GO-41067	5-5-49	SRLX 3978	Grinnell, Iowa	Lake View, N.J.	240 cs. RH&RP Eggs 240 cs. Graded Eggs	158	401.95	50	323	106.99
GO-41336	5-19-49	SRLX 6963	Grinnell, Iowa	Somerville, Mass.	420 cs. RH&RP Eggs	164	365.06	44	274	72.24
GO-46578	7-11-49	SRLX 4549	Grinnell, Iowa	Worcester, Mass.	342 cs. RH&RP Eggs 80 cs. Graded Eggs	164	366.80	9	(G) 270	47.43
GO-43318	6-29-49	URTX 4540	Hampton, Iowa	Washington, D.C.	107 cs. RH&RP Eggs 293 cs. Graded Eggs	151	320.12	68	1100½	629.40
GO-35725	3-22-49	SRLX 521	Hastings, Nebr.	Chicago, Ill.	520 cs. RH&RP Eggs	108	297.65	34	60	58.95
GO-42165	9-30-49	FGEX 38732	Hastings, Nebr.	Pennimman, Va.	600 cs. RH&RP Eggs	216	686.88	(S)	(S)	484.20
GO-37468	4-22-49	NP 92055	Iowa Falls, Iowa	Fresh Pond, N.Y.	480 cs. RH&RP Eggs	159	404.50	87	602	143.65
GO-42855	8-25-49	NRC 7028	Iowa Falls, Iowa	Albany, N.Y.	114 cs. RH&RP Eggs 486 cs. Graded Eggs	151	480.18	25	(G) 203	110.90
GO-37467	5-10-49	PFE 40312	Iowa Falls, Iowa	Somerville, Mass.	600 cs. RH&RP Eggs	164	521.52	130	1122	292.67
GO-42854	7-1-49	SRLX 5369	Iowa Falls, Iowa	Norfolk, Va.	123 cs. RH&RP Eggs 357 cs. Graded Eggs	159	404.50	38	(G) 154	80.55
GO-37970	3-29-49	PFE 73656	Kearney, Nebr.	Chicago, Ill.	480 cs. RH&RP Eggs	109	277.30	50	90	99.93
GO-42368	4-6-49	PFE 76280	Kearney, Nebr.	Clinton, Iowa	480 cs. RH&RP Eggs	108	274.75	52	30	72.65
GO-46546	7-7-49	SRLX 6570	Keokuk, Iowa	Pottsville, Pa.	85 cs. Graded Eggs (mixed car)	145	65.32	25	(G) 13½	7.76
GO-45029	7-21-49	SRLX 4913	Keokuk, Iowa	Pottsville, Pa.	86 cs. Graded Eggs (mixed car)	145	66.09	22	(G) 107	80.88
GO-41757	7-21-49	SRLX 4913	Keokuk, Iowa	Pottsville, Pa.	86 cs. RH&RP Eggs (mixed car)	145	66.09	22	240	142.50
GO-45030	9-10-49	SRLX 7170	Keokuk, Iowa	Wilmington, Del.	50 cs. Graded Eggs	154	40.81	50	(G) 1322	854.65
GO-45031	9-23-49	SRLX 4439	Keokuk, Iowa	Wilmington, Del.	100 cs. Graded Eggs (mixed car)	154	81.62	100	(G) 795	416.11
GO-42346	8-12-49	SRLX 3516	Lima, Ohio	Port Morris, N.Y.	480 cs. RH&RP Eggs	130	330.72	72	616	150.48

In instances where freight charges were subject to interim increase under X-168, rates were increased by E.C. rather than charges. This may result in differences of a few cents in some revenue items.

(G) Graded Eggs - Tolerance of 5% Deducted - All or part of eggs shown as damaged.

(S) Agreed settlement on government car damaged - 18000 doz. @ .0269

* Follow-up claim to GO-41757

CLAIM NUMBER	DATE SHIPPED	CAR INITIAL AND NUMBER	FROM	TO	CONTENTS OF CAR	#RATE (CENTS PER CWT.)	REVENUE PER CAR (DOLLARS)	CASES DAMAGED	DOZEN DAMAGED	AMOUNT OF CLAIM (DOLLARS)
GO-41892	8-12-49	SRLX 7402	Lima, Ohio	Fresh Pond, N.Y.	480 cs. Graded Eggs	130	330.72	111	(G) 378½	172.55
GO-37463	1-6-49	URTX 35530	Mason City, Iowa	Norfolk, Va.	480 cs. RH&RP Eggs	151	384.14	22	128	52.81
GO-38707	1-12-49	URTX 35072	Mason City, Iowa	Norfolk, Va.	600 cs. RH&RP Eggs	151	384.14	131	267	122.87
GO-46799	8-2-49	MDT 4451	Minneapolis, Minn.	New York, N.Y.	480 cs. RH&RP Eggs	173	440.11	287	420	314.53
GO-46798	8-29-49	URTX 37014	Minneapolis, Minn.	New York, N.Y.	480 cs. RH&RP Eggs	173	440.11	325	690	431.75
GO-46797	8-30-49	URTX 8174	Minneapolis, Minn.	New York, N.Y.	500 cs. RH&RP Eggs	173	458.45	315	630	419.86
GO-37282	2-23-49	MRC 18220	Montevideo, Minn.	San Francisco, Calif.	600 cs. RH&RP Eggs	227	721.86	---	10085- 7/12	1678.96
GO-35145	3-12-49	NP 91005	Montevideo, Minn.	Chicago, Ill.	480 cs. Graded Eggs	89	226.42	16	30	27.80
GO-36346	3-15-49	SRLX 6788	Montevideo, Minn.	Baltimore, Md.	100 cs. Graded Eggs (mixed car)	192½	102.03	12	(G) 160	69.51
GO-38254	3-30-49	SRLX 6828	Montevideo, Minn.	Baltimore, Md.	256 cs. Graded Eggs	192½	260.18	9	(G) 72½	37.79
GO-36345	4-6-49	SRLX 5242	Montevideo, Minn.	Baltimore, Md.	80 cs. Graded Eggs (mixed car)	192½	81.62	34	(G) 51	15.32
GO-37283	4-20-49	SRLX 3842	Montevideo, Minn.	Baltimore, Md.	----------	192½	------	4	(G) 27	12.47
GO-36347	4-20-49	SRLX 3849	Montevideo, Minn.	Baltimore, Md.	200 cs. Graded Eggs	192½	204.05	14	(G) 108	62.99
GO-45055	10-19-49	SRLX 5874	Montevideo, Minn.	Baltimore, Md.	273 cs. Graded Eggs (mixed car)	200½	290.10	18	(G) 47½	85.62
GO-41794	6-8-49	SRLX 3943	Montevideo, Minn.	Baltimore, Md.	225 cs. Graded Eggs	192½	229.56	24	(G) 141	96.19
GO-39851	3-29-49	MDT 23565	Montevideo, Minn.	Lima, Ohio	480 cs. RH&RP Eggs	139½	354.89	7	210	38.67
GO-36342	3-28-49	NP 92896	Montevideo, Minn.	Lima, Ohio	480 cs. RH&RP Eggs	139½	354.89	4	120	23.78
GO-40397	4-9-49	PFE 50548	Montevideo, Minn.	Lima, Ohio	480 cs. Graded Eggs	139½	354.89	7	210	32.44
GO-40609	5-5-49	URTX 7742	Montevideo, Minn.	Port Morris, N.J.	480 cs. RH&RP Eggs	196½	499.90	95	686	170.40
GO-41788	5-18-49	SRLX 5122	Montevideo, Minn.	Washington, D.C.	222 cs. Graded Eggs (mixed car)	192½	226.50	26	(G) 67	39.83
GO-41789	5-26-49	SRLX 4149	Montevideo, Minn.	Washington, D.C.	190 cs. Graded Eggs (mixed car)	192½	193.85	35	(G) 115	83.06
GO-41793	6-8-49	SRLX 3943	Montevideo, Minn.	Washington, D.C.	225 cs. Graded Eggs (mixed car)	192½	229.56	17	(G) 208½	81.09
GO-41791	6-22-49	SRLX 6211	Montevideo, Minn.	Washington, D.C.	205 cs. Graded Eggs (mixed car)	192½	208.65	4	(G) 42	22.11
GO-41790	6-15-49	SRLX 6989	Montevideo, Minn.	Washington, D.C.	202 cs. Graded Eggs (mixed car)	192½	206.09	11	(G) 178½	68.31
GO-41792	6-30-49	SRLX 4235	Montevideo, Minn.	Washington, D.C.	174 cs. Graded Eggs (mixed car)	192½	177.52	8	(G) 121	44.78
GO-45884	11-2-49	SRLX 6345	Montevideo, Minn.	Washington, D.C.	25 cs. Graded Eggs (mixed car)	200½	132.83	15	(G) 54	23.65

In instances where freight charges were subject to interim increase under X-168, rates were increased by E.C. rather than charges. This may result in differences of a few cents in some revenue items.

(G) Graded Eggs - Tolerance of 5% Deducted - All or part of eggs shown as damaged.

CLAIM NUMBER	DATE SHIPPED	CAR INITIAL AND NUMBER	FROM	TO	CONTENTS OF CAR	#RATE (CENTS PER CWT.)	REVENUE PER CAR (DOLLARS)	CASES DAMAGED	DOZEN DAMAGED	AMOUNT OF CLAIM (DOLLARS)
G0-46569	12-29-49	PFE 41733	Montevideo, Minn.	Washington, D.C.	424 cs. Graded Eggs (mixed car)	200½	450.57	9	(G) 10	13.48
G0-42695	6-24-49	PFE 48188	Montevideo, Minn.	Newark, N.J.	480 cs. RH&RP Eggs	196½	499.90	153	360	168.05
G0-40436	4-22-49	SRLX 3744	Nashville, Tenn.	Greensboro, N.C.	250 cs. RH&RP Eggs (mixed car)	143	189.48	22	124	85.84
G0-42265	6-27-49	SRLX 2543	New Rockford, N.D.	Fitchburg, Mass.	16 cs. RH&RP Eggs (mixed car)	232	19.67	16	185	108.30
G0-42885	7-14-49	SRLX 9861	New Rockford, N.D.	Fitchburg, Mass.	20 cs. RH&RP Eggs (mixed car)	232	24.59	4	83	39.39
G0-41820	7-6-49	SRLX 5409	New Rockford, N.D.	Easton, Pa.	55 cs. RH&RP Eggs (mixed car)	219	63.84	8	42	24.78
G0-41340	7-21-49	SRLX 6211	New Rockford, N.D.	Easton, Pa.	55 cs. RH&RP Eggs (mixed car)	219	63.84	20	143	137.72
G0-44621	7-12-49	SRLX 5469	New Rockford, N.D.	Camden, N.J.	100 cs. RH&RP Eggs (mixed car)	224	112.72	---	75	25.83
G0-43850	8-5-49	SRLX 4416	New Rockford, N.D.	Greenville, N.C.	416 cs. RH&RP Eggs	252	555.61	16	195	113.10
G0-42886	8-10-49	SRLX 2693	New Rockford, N.D.	Shenandoah, Pa.	24 cs. RH&RP Eggs (mixed car)	216	27.48	8	72	45.36
G0-42887	9-30-49	SRLX 6070	New Rockford, N.D.	Shenandoah, Pa.	10 cs. RH&RP Eggs (mixed car)	224	11.87	10	66	31.02
G0-45913	8-23-49	SRLX 5458	New Rockford, N.D.	Trenton, N.J.	16 cs. RH&RP Eggs (mixed car)	224	19.00	16	396	192.69
G0-42266	9-20-49	SRLX 3172	New Rockford, N.D.	Trenton, N.J.	24 cs. RH&RP Eggs (mixed car)	232	29.51	24	284	139.16
G0-39923	5-14-49	SRLX 10172	Parsons, Kans.	Mobile, Ala.	400 cs. RH&RP Eggs	179	379.48	8	60	30.20
G0-47887	9-8-49	ART 20802	Parsons, Kans.	Atlanta, Ga.	510 cs. RH&RP Eggs	186	502.76	9	135	81.36
G0-42305	7-15-49	SRLX 4861	St. Louis, Mo.	Watertown, N.Y.	-------- -- -----	139	------	----	30	2.18
G0-38790	3-31-49	SRLX 5283	Salina, Kans.	Nashville, Tenn.	520 cs. RH&RP Eggs	161	443.72	7	15	7.35
G0-36375	2-4-49	WFEX 49267	Sauk Centre, Minn.	Seattle, Wash.	600 cs. RH&RP Eggs	187	594.66	2	60	29.83
G0-40564	3-2-49	URIX 7728	Sauk Centre, Minn.	Pittsburg, Pa.	480 cs. RH&RP Eggs	151	384.14	37	146	112.30
G0-39444	3-7-49	SRLX 5859	Sauk Centre, Minn.	Lima, Ohio	520 cs. RH&RP Eggs	133	366.55	9	270	26.72
G0-41339	3-15-49	SFRD 35020	Sauk Centre, Minn.	Newark, N.J.	600 cs. RH&RP Eggs	190	604.20	80	87	30.37
G0-35809	3-16-49	SRLX 6296	Sauk Centre, Minn.	Chicago, Ill.	435 cs. RH&RP Eggs	88	202.88	12	30	24.17
G0-35810	3-29-49	SRLX 5441	Sauk Centre, Minn.	Chicago, Ill.	480 cs. RH&RP Eggs	88	223.87	52	60	80.55
G0-37292	4-16-49	SRLX 6034	Sauk Centre, Minn.	Chicago, Ill.	480 cs. RH&RP Eggs	88	223.87	23	60	57.55
G0-37870	5-12-49	IC 50364	Sauk Centre, Minn.	Chicago, Ill.	480 cs. RH&RP Eggs	88	223.87	45	60	70.88

In instances where freight charges were subject to interim increase under X-168, rates were increased by E.C. rather than charges. This may result in differences of a few cents in some revenue items.

(G) Graded Eggs - Tolerance of 5% Deducted - All or part of eggs shown as damaged.

CLAIM NUMBER	DATE SHIPPED	CAR INITIAL AND NUMBER	FROM	TO	CONTENTS OF CAR	#RATE (CENTS PER CWT.)	REVENUE PER CAR (DOLLARS)	CASES DAMAGED	DOZEN DAMAGED	AMOUNT OF CLAIM (DOLLARS)
GO-38273	5-28-49	SRLX 6751	Sauk Centre, Minn.	Chicago, Ill.	560 cs. RH&RP Eggs	88	261.18	170	240	228.70
GO-41341	5-4-49	SRLX 5399	Sauk Centre, Minn.	New York, N.Y.	480 cs. RH&RP Eggs	190	483.36	11	126	49.24
GO-41342	5-11-49	SRLX 6130	Sauk Centre, Minn.	New York, N.Y.	490 cs. RH&RP Eggs	190	493.43	141	431	296.13
GO-37730	1-13-49	FGEX 37626	Sauk Centre, Minn.	Savannah, Ga.	480 cs. RH&RP Eggs	246	625.82	12	83	46.53
GO-40112	5-21-49	SRLX 4275	Sauk Centre, Minn.	Raleigh, N.C.	480 cs. RH&RP Eggs	215	546.96	67	268	168.79
GO-41344	6-9-49	WFEX 63755	Sauk Centre, Minn.	Norfolk, Va.	500 cs. RH&RP Eggs	198	524.70	56	287	112.20
GO-44706	6-15-49	MPEX 61170	Sauk Centre, Minn.	Greensboro, N.C.	480 cs. RH&RP Eggs	210	534.24	20	543	184.59
GO-41343	6-23-49	WFEX 62277	Sauk Centre, Minn.	Baltimore, Md.	500 cs. RH&RP Eggs	186	492.90	43	782	170.28
GO-43851	6-30-49	SRLX 4536	Sauk Centre, Minn.	Philadelphia, Pa.	424 cs. RH&RP Eggs	190	426.97	20	144	59.57
GO-46866	9-14-49	NP 90482	Sedalia, Mo.	Wilmington, Del.	133 cs. Graded Eggs	168	118.42	50	(G) 626	340.54
GO-35766	1-12-49	URTX 37340	Spencer, Iowa	Fresh Pond, N.Y.	600 cs. RH&RP Eggs	182	578.76	236	1026	339.21
GO-37857	3-16-49	PFE 61889	Spencer, Iowa	Fresh Pond, N.Y.	480 cs. RH&RP Eggs	182	463.01	89	437	107.48
GO-41798	7-1-49	URTX 81726	Spencer, Iowa	Fresh Pond, N.Y.	464 cs. RH&RP Eggs	182	447.57	94	542	180.91
GO-41800	7-20-49	URTX 81679	Spencer, Iowa	Fresh Pond, N.Y.	504 cs. RH&RP Eggs	182	486.16	127	598	258.71
GO-41799	7-21-49	URTX 81592	Spencer, Iowa	Port Morris, N.Y.	516 cs. RH&RP Eggs	182	497.73	56	491	164.59
GO-40399	5-19-49	URTX 35550	Spencer, Iowa	Lakeview, N.J.	480 cs. RH&RP Eggs	182	463.01	86	477	146.45
GO-35189	3-4-49	URTX 7194	Waseca, Minn.	Chicago, Ill.	568 cs. RH&RP Eggs	64	192.67	---	120	149.28
GO-36412	3-23-49	URTX 10564	Waseca, Minn.	Chicago, Ill.	528 cs. RH&RP Eggs	64	179.10	30	30	43.40
GO-35829	4-21-49	URTX 4710	Waseca, Minn.	Chicago, Ill.	528 cs. RH&RP Eggs	64	179.10	65	240	182.50
GO-41396	4-25-49	URTX 7112	Waseca, Minn.	Wilmington, N.C.	528 cs. RH&RP Eggs	213	596.06	25	77	41.99
GO-44083	5-18-49	URTX 4637	Waseca, Minn.	New York, N.Y.	480 cs. RH&RP Eggs	173	440.11	206	1149	730.17
GO-45090	6-3-49	URTX 4935	Waseca, Minn.	Garden City, N.Y.	480 cs. RH&RP Eggs	179	455.38	18	583	223.18
GO-42922	7-19-49	URTX 4517	Waseca, Minn.	Washington, D.C.	520 cs. RH&RP Eggs	169	465.76	55	378	210.92
GO-41839	8-11-49	SRLX 5897	Waseca, Minn.	New Orleans, La.	25 cs. RH&RP Eggs (mixed car)	198	26.24	4	(G) 20	11.25
GO-40770	3-9-49	SFBD 7254	Worthington, Minn.	Lima, Ohio	396 cs. RH&RP Eggs 84 cs. Graded Eggs	124	315.46	17	510	88.20
GO-35796	3-23-49	GARX 90634	Worthington, Minn.	Chicago, Ill.	480 cs. RH&RP Eggs	80	203.52	50	60	76.98
GO-40412	4-5-49	SRLX 10109	Worthington, Minn.	Chicago, Ill.	480 cs. RH&RP Eggs	80	203.52	106	752	167.24
GO-37825	4-13-49	SFRD 8240	Worthington, Minn.	Chicago, Ill.	480 cs. RH&RP Eggs	80	203.52	25	6	57.28
GO-40413	4-13-49	SRLX 6097	Worthington, Minn.	Norfolk, Va.	480 cs. RH&RP Eggs	193	490.99	6	31	13.73

In instances where freight charges were subject to interim increase under X-168, rates were increased by E.C. rather than charges. This may result in differences of a few cents in some revenue items.

(G) Graded Eggs - Tolerance of 5% Deducted - All or part of eggs shown ad damaged.

CLAIM NUMBER	DATE SHIPPED	CAR INITIAL AND NUMBER	FROM	TO	CONTENTS OF CAR	#RATE (CENTS PER CWT.)	REVENUE PER CAR (DOLLARS)	CASES DAMAGED	DOZEN DAMAGED	AMOUNT OF CLAIM (DOLLARS)
GO-41819	5-26-49	NWX 2439	Worthington, Minn.	Wilmington, N.C.	600 cs. RH&RP Eggs	218	693.24	5	30	15.42
GO-41818	6-18-49	SRLX 5053	Worthington, Minn.	Columbus, Ga.	480 cs. RH&RP Eggs	200	508.80	21	358	195.60
GO-42838	8-5-49	SRLX 3974	Worthington, Minn.	Newark, N.J.	480 cs. RH&RP Eggs	188	478.27	58	644	163.27
GO-44424	12-6-49	ART 24268	Worthington, Minn.	Seattle, Wash.	600 cs. RH&RP Eggs	187	594.66	5	30	14.13
						TOTAL	$52543.43			$25848.07

#In instances where freight charges were subject to interim increase under X-168, rates were increased by E.C. rather than charges. This may result in differences of a few cents in some revenue items.

(G) Graded Eggs - Tolerance of 5% Deducted - All or part of eggs shown as damaged.

STATEMENT OF CLAIMS FILED ON REHANDLED AND REPACKED EGGS SHIPPED BY SWIFT & COMPANY DURING 1949 COMPUTED ON BASIS FILED AND ON 4% TOLERANCE BASIS UNDER SUSPENSION.

CLAIM NUMBER	CASES DAMAGED	DOZEN DAMAGED	GROSS LOSS ON DAMAGED EGGS (DOLLARS)	SALVAGE (DOLLARS)	NET LOSS ON DAMAGED EGGS (DOLLARS)	LABOR AND MATERIAL (DOLLARS)	TOTAL CLAIM (DOLLARS)	DOZEN TOLERANCE AT 4%	DOZEN DAMAGED AFTER DEDUCTION OF 4% TOLERANCE	GROSS LOSS ON DAMAGED EGGS AFTER DEDUCTION 4% TOLERANCE (DOLLARS)	LABOR AND MATERIAL AFTER DEDUCTION 4% TOLERANCE (DOLLARS)	GROSS LOSS DAMAGED EGGS, LABOR AND MATERIAL AFTER 4% DEDUCTION (DOLLARS)	SALVAGE (DOLLARS)	TOTAL CLAIM AFTER DEDUCTION OF 4% TOLERANCE (DOLLARS)	DIFFERENCE BETWEEN OUR CLAIMS AND TOLERANCE BASIS CLAIM (DOLLARS)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)
GO-42696	6	180	99.00	78.50	20.50	6.70	27.20	7½	172½	94.88	6.42	101.30	78.50	22.80	4.40
GO-41068	265	600	324.00	149.56	174.44	122.70	297.24	110 5/12	489 5/12	264.29	100.10	364.39	149.56	214.83	82.41
GO-45043	56	666	419.58	228.76	190.82	22.40	213.22	70	596	375.48	20.05	395.53	228.76	166.77	46.45
GO-39492	27	30	16.12	—	16.12	27.30	43.42	33 3/4	—	—	—	—	—	None	43.42
GO-43714	112	150	83.50	—	83.50	114.80	198.30	140	10	5.55	76.54	82.09	—	82.09	116.21
GO-42360	12	360	207.76	—	207.76	—	207.76	15	345	199.10	—	199.10	—	199.10	8.66
GO-46702	120	638	369.90	118.20	251.70	48.00	299.70	150	488	282.75	36.72	319.47	118.20	201.27	98.43
GO-42363	3	90	57.12	—	57.12	—	57.12	3 3/4	86 ¼	54.84	—	54.84	—	54.84	2.28
GO-46019	15	60	35.10	6.75	28.35	7.40	35.75	18 3/4	41 ¼	24.13	5.09	29.22	6.75	22.47	13.28
GO-36373	14	30	14.10	—	14.10	13.08	27.18	17½	12½	5.88	5.45	11.33	—	11.33	15.85
GO-44624	314	2308	1315.56	723.62	591.94	93.60	685.54	392½	1915½	1091.84	77.69	1169.53	723.62	445.91	239.63
GO-44346	337	1140	666.90	208.48	458.42	208.73	667.15	421¼	718 3/4	420.47	131.50	551.97	208.48	343.49	323.66
GO-41726	4	75	43.50	23.87	19.63	3.16	22.79	5	70	40.60	2.95	43.55	23.87	19.68	3.11
GO-44345	13	142	85.20	23.45	61.75	7.88	69.63	16¼	125 3/4	75.45	6.97	82.42	23.45	58.97	10.66
GO-41894	4	41	23.83	6.42	17.41	2.72	20.13	5	36	20.88	2.39	23.27	6.42	16.85	3.28
GO-44631	2	25	11.70	—	11.70	—	11.70	2½	22½	10.53	—	10.53	—	10.53	1.17
GO-42853	3	38	22.19	6.36	15.83	2.46	18.30	3 3/4	34¼	19.87	2.21	22.08	6.36	15.72	2.58
GO-42164	45	465	274.35	162.80	1.55	13.50	125.05	56¼	408 3/4	241.16	11.88	253.04	162.80	90.24	34.81
GO-42252	33	33	19.14	9.50	9.64	—	9.64	41¼	—	—	—	—	9.50	None	9.64
GO-41810	10	90	53.10	31.53	21.57	—	21.57	12½	77½	45.73	—	45.73	31.53	14.20	7.37
GO-41811	21	148	98.01	28.50	69.51	14.75	84.26	26¼	121 3/4	80.36	12.10	92.46	28.50	63.96	20.30
GO-42194	76	729	459.27	163.11	296.16	39.45	335.61	95	634	399.42	34.32	433.74	163.11	270.63	64.98
GO-47359	500	15000	8700.00	6229.71	2470.29	1063.89	3534.18	625	14375 (#916 2/3)	8337.50 (14083 1/3)	1021.33 (8178.00)	9358.83 (1000.06)	6229.71 (9178.06)	3129.12 (2948.35)	405.06 (585.83)
GO-41809	15	69	40.02	13.65	26.37	5.55	31.92	18 3/4	50¼	29.15	4.02	33.17	13.65	19.52	12.40
GO-37787	3	30	14.70	9.00	5.70	—	5.70	3 3/4	26¼	12.86	—	12.86	9.00	3.86	1.84
GO-40554	5	60	29.10	18.00	11.10	—	11.10	6¼	53 3/4	26.07	—	26.07	18.00	8.07	3.03

Claim computed on basis of 6% tolerance.

CLAIM NUMBER	CASES DAMAGED	DOZEN DAMAGED	GROSS LOSS ON DAMAGED EGGS (DOLLARS)	SALVAGE (DOLLARS)	NET LOSS ON DAMAGED EGGS (DOLLARS)	LABOR AND MATERIAL (DOLLARS)	TOTAL CLAIM (DOLLARS)	DOZEN TOLERANCE AT 4%	DOZEN DAMAGED AFTER DEDUCTION OF 4% TOLERANCE	GROSS LOSS ON DAMAGED EGGS AFTER DEDUCTION 4% TOLERANCE (DOLLARS)	LABOR AND MATERIAL AFTER DEDUCTION 4% TOLERANCE (DOLLARS)	GROSS LOSS DAMAGED EGGS, LABOR AND MATERIAL AFTER 4% DEDUCTION (DOLLARS)	SALVAGE (DOLLARS)	TOTAL CLAIM AFTER DEDUCTION OF 4% TOLERANCE (DOLLARS)	DIFFERENCE BETWEEN OUR CLAIMS AND TOLERANCE BASIS. CLAIM (DOLLARS)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)
GO-40411	4	30	14.85	9.00	5.85	—	5.85	5	25	12.38	—	12.38	9.00	3.38	2.47
GO-41387	39	186	112.80	26.75	86.05	—	86.05	48 3/4	137¼	82.35	—	82.35	26.75	55.60	30.45
GO-42365	3	90	56.96	—	56.96	—	56.96	3 3/4	86¼	54.59	—	54.59	—	54.59	2.37
GO-42124	11	63	34.49	—	34.49	—	34.49	13 3/4	49¼	26 35	—	26.35	—	26.35	8.14
GO-41753	15	35	22.75	9.45	13.30	—	13.30	18 3/4	16¼	10.56	—	10.56	9.45	1.11	12.19
GO-36483	127	300	139.50	—	139.50	169.75	309.25	158 3/4	141¼	65.68	79.78	145.46	—	145.46	163.79
GO-40535	11	112	61.60	20.28	41.32	7.23	48.55	13 3/4	98¼	54.04	6.36	60.40	20.28	40.12	8.43
GO-39443	21	93	46.97	15.20	31.77	11.21	42.98	26¼	66 3/4	33.71	8.07	41.78	15.20	26.58	16.40
GO-40563	24	113	59.33	18.70	40.63	8.68	49.31	30	83	43.58	6.42	50.00	18.70	31.30	18.01
GO-41336	44	274	149.33	77.09	72.24	—	72.24	55	219	119.36	—	119.36	77.09	42.27	29.97
GO-35725	34	60	27.90	—	27.90	31.05	58.95	42½	17½	8.14	9.00	17.14	—	17.14	41.81
GO-37468	87	602	331.10	213.55	117.55	26.10	143.65	108 3/4	493¼	271.29	21.40	292.69	213.55	79.14	64.51
GO-37467	130	1122	617.10	324.43	292.67	—	292.67	162½	959½	527.73	—	527.73	324.43	203.30	89.37
GO-37970	50	90	44.10	—	44.10	55.83	99.93	62½	27½	13.45	17.02	30.47	—	30.47	69.46
GO-42368	52	30	15.00	5.30	9.70	62.95	72.65	65	—	—	—	—	—	None	72.65
GO-41757	22	240	156.00	13.50	142.50	—	142.50	27½	212½	138.84	—	138.84	13.50	125.34	17.16
GO-42346	72	616	357.28	228.40	128.88	21.60	150.48	90	526	303.69	18.36	322.05	228.40	93.65	56.83
GO-37463	22	128	69.54	28.15	41.39	11.42	52.81	27½	100½	54.24	8.91	63.15	28.15	35.00	17.81
GO-38707	131	267	132.83	66.60	66.23	56.54	122.77	163 3/4	103¼	51.80	22.05	73.85	66.60	7.25	115.52
GO-46799	287	420	273.00	98.04	174.96	139.57	314.53	358 3/4	61¼	40.95	20.94	61.89	98.04	None	314.53
GO-46798	325	690	448.50	178.55	269.95	161.80	431.75	406¼	283 3/4	183.89	66.34	250.23	178.55	71.68	360.07
GO-46797	315	630	409.50	149.34	260.16	159.70	419.86	393 3/4	236¼	155.61	60.69	216.30	149.34	66.96	352.90
GO-37282	600	10085 7/12	4641.15	3787.09	854.06	824.90	1678.96 (#1100)	750	9335 7/12 (8985 7/12)	4316.27 (4130.62)	767.16 (734.16)	5083.43 (4864.78)	3787.09 (3787.09)	1296.34 (1077.69)	382.62 (601.27)
GO-39851	7	210	102.90	67.87	35.03	3.64	38.67	8 3/4	201¼	98.78	3.49	102.27	67.87	34.40	4.27
GO-36342	4	120	58.20	38.47	19.73	4.05	23.78	5	115	55.87	3.89	59.76	38.47	21.29	2.49
GO-40609	95	686	377.30	235.40	141.90	28.50	170.40	118 3/4	567¼	313.16	23.66	336.82	235.40	101.42	68.98
GO-42695	153	360	190.80	86.68	104.12	63.93	168.05	191¼	168 3/4	89.68	30.05	119.73	86.68	33.05	135.00

Claim computed on basis of 6% tolerance.

* Car wrecked on CB&Q RR near Hastings, Nebr. All cases damaged.

CLAIM NUMBER	CASES DAMAGED	DOZEN DAMAGED	GROSS LOSS ON DAMAGED EGGS (DOLLARS)	SALVAGE (DOLLARS)	NET LOSS ON DAMAGED EGGS (DOLLARS)	LABOR AND MATERIAL (DOLLARS)	TOTAL CLAIM (DOLLARS)	DOZEN TOLERANCE AT 4%	DOZEN DAMAGED AFTER DEDUCTION OF 4% TOLERANCE	GROSS LOSS ON DAMAGED EGGS AFTER DEDUCTION 4% TOLERANCE (DOLLARS)	LABOR AND MATERIAL AFTER DEDUCTION 4% TOLERANCE (DOLLARS)	GROSS LOSS DAMAGED EGGS, LABOR AND MATERIAL AFTER 4% DEDUCTION (DOLLARS)	SALVAGE (DOLLARS)	TOTAL CLAIM AFTER DEDUCTION OF 4% TOLERANCE (DOLLARS)	DIFFERENCE BETWEEN OUR CLAIMS AND TOLERANCE BASIS CLAIM (DOLLARS)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)
GO-42265	16	165	103.94	3.96	99.98	8.32	108.30	20	165	92.51	7.40	99.91	3.96	95.95	12.35
GO-42885	4	83	46.57	9.18	37.39	1.00	38.39	5	78	43.78	0.94	44.72	9.18	35.54	2.85
GO-41820	8	42	24.78	___	24.78	___	24.78	10	32	18.83	___	18.83	___	18.83	5.95
GO-41340	20	267	167.39	54.00	113.39	23.14	136.53	25	242	152.32	21.06	173.38	54.00	119.38	17.15
GO-43850	16	195	113.10	___	113.10	___	113.10	20	175	101.79	___	101.79	___	101.79	11.31
GO-42886	8	72	45.36	___	45.36	___	45.36	10	62	39.01	___	39.01	___	39.01	6.35
GO-42887	10	66	31.02	___	31.02	___	31.02	12½	53½	25.13	___	25.13	___	25.13	5.89
GO-43913	16	396	248.59	71.62	176.97	15.72	192.69	20	376	246.16	14.93	261.09	71.62	189.47	3.22
GO-42266	24	284	157.64	30.80	126.84	12.32	139.16	30	254	141.88	11.09	152.97	30.80	122.17	16.99
GO-39923	8	60	33.00	2.80	30.20	___	30.20	10	50	27.39	___	27.39	2.80	24.59	5.61
GO-47887	9	135	81.00	14.10	66.90	14.54	81.36	11¼	123 3/4	74.52	13.38	87.90	14.10	73.80	7.56
GO-38790	7	15	7.35	___	7.35	___	7.35	8 3/4	6¼	3.09	___	3.09	___	3.09	4.26
GO-36375	2	60	29.83	___	29.83	___	29.83	2½	57½	28.64	___	28.64	___	28.64	1.19
GO-40564	37	146	71.60	___	71.60	40.70	112.30	46¼	99 3/4	48.69	27.67	76.36	___	76.36	35.94
GO-39444	9	270	119.70	101.83	17.87	8.85	26.72	11¼	258 3/4	114.91	8.50	123.41	101.83	21.58	5.14
GO-41339	80	87	45.77	26.80	18.97	11.40	30.37	100	___	___	___	___	___	None	30.37
GO-35809	12	30	14.48	___	14.48	9.69	24.17	15	15	7.24	4.85	12.09	___	12.09	12.08
GO-35810	52	60	28.20	___	28.20	52.35	80.55	65	___	___	___	___	___	None	80.55
GO-37292	23	60	29.70	___	29.70	27.85	57.55	28 3/4	31¼	15.44	14.48	29.92	___	29.92	27.63
GO-37870	45	60	31.65	___	31.65	38.63	70.28	56¼	3 3/4	1.90	2.32	4.22	___	4.22	66.06
GO-38273	170	240	123.60	___	123.60	105.10	228.70	212½	27½	13.60	11.56	25.16	___	25.16	203.54
GO-41341	11	126	71.19	28.80	42.39	6.85	49.24	13 3/4	112¼	63.36	6.30	69.66	28.80	40.86	8.38
GO-41342	141	431	237.30	___	237.30	58.80	296.13	176¼	254 3/4	140.01	34.69	174.70	___	174.70	121.43
GO-37730	12	83	46.53	___	46.53	___	46.53	15	68	38.15	___	38.15	___	38.15	8.38
GO-40112	67	268	144.00	___	144.00	24.79	168.79	83 3/4	184¼	99.36	17.11	116.47	___	116.47	52.32
GO-41344	56	287	145.65	60.20	85.45	26.75	112.20	70	217	110.69	20.33	131.02	60.20	70.82	41.38
GO-44706	20	543	342.09	157.50	184.59	___	184.59	25	518	324.99	___	324.99	157.50	167.49	17.10
GO-41343	43	782	422.28	269.20	153.08	17.20	170.28	53 3/4	728¼	392.72	16.00	408.72	269.20	139.52	30.76

CLAIM NUMBER	CASES DAMAGED	DOZEN DAMAGED	GROSS LOSS ON DAMAGED EGGS (DOLLARS)	SALVAGE (DOLLARS)	NET LOSS ON DAMAGED EGGS (DOLLARS)	LABOR AND MATERIAL (DOLLARS)	TOTAL CLAIM (DOLLARS)	DOZEN TOLERANCE AT 4%	DOZEN DAMAGED AFTER DEDUCTION OF 4% TOLERANCE	GROSS LOSS ON DAMAGED EGGS AFTER DEDUCTION 4% TOLERANCE (DOLLARS)	LABOR AND MATERIAL AFTER DEDUCTION 4% TOLERANCE (DOLLARS)	GROSS LOSS, DAMAGED EGGS, LABOR AND MATERIAL AFTER 4% DEDUCTION (DOLLARS)	SALVAGE (DOLLARS)	TOTAL CLAIM AFTER DEDUCTION OF 4% TOLERANCE (DOLLARS)	DIFFERENCE BETWEEN OUR CLAIMS AND TOLERANCE BASIS CLAIM (DOLLARS)
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)
GO-43851	20	144	78.42	25.60	52.82	6.75	59.57	25	119	65.09	5.60	70.69	25.60	45.09	14.48
GO-35766	236	1026	510.09	252.28	257.81	81.40	339.21	295	731	362.16	57.79	419.95	252.28	167.67	171.54
GO-37857	89	437	211.95	131.17	80.78	26.70	107.48	111¼	325 3/4	158.96	20.03	178.99	131.17	47.82	59.66
GO-41798	94	542	308.94	156.23	152.71	28.20	180.91	117½	424½	240.97	22.00	262.97	156.23	106.74	74.17
GO-41800	127	598	379.73	159.12	220.61	38.10	258.71	158 3/4	439¼	277.20	27.81	305.01	159.12	145.89	112.82
GO-41799	56	491	311.79	164.00	147.79	16.80	164.59	70	421	268.14	14.45	282.59	164.00	118.59	46.00
GO-40399	86	477	255.20	143.15	112.05	34.40	146.45	107½	369½	196.50	26.49	222.99	143.15	79.84	66.61
GO-364[illegible]	30	30	13.95	—	13.95	29.45	43.40	37½	—	—	—	—	—	None	43.40
GO-35829	65	240	122.40	—	122.40	60.10	182.50	81¼	158 3/4	80.78	39.67	120.45	—	120.45	62.05
GO-41396	25	77	40.62	10.75	29.87	12.12	41.99	31¼	45 3/4	23.97	7.15	31.12	10.75	20.37	21.62
GO-44083	206	1149	633.57	—	633.57	96.60	730.17	257½	891½	494.18	75.35	569.53	—	569.53	160.64
GO-45090	18	583	337.15	119.37	217.78	5.40	223.18	22½	560½	323.66	5.18	328.84	119.37	209.47	13.71
GO-42922	55	378	251.37	70.70	180.67	30.25	210.92	68 3/4	309¼	206.12	24.81	230.93	70.70	160.23	50.69
GO-35796	50	60	28.20	—	28.20	48.78	76.98	62½	—	—	—	—	—	None	76.98
GO-40412	106	752	394.80	259.36	135.44	31.80	167.24	132½	619½	323.74	26.08	349.82	259.36	90.46	76.78
GO-37285	25	6	29.40	—	29.40	27.88	57.28	31¼	—	—	—	—	—	None	57.28
GO-40413	6	31	15.87	6.48	9.39	4.34	13.73	7½	23½	12.06	3.30	15.36	6.48	8.88	4.85
GO-41819	5	30	16.20	3.75	12.45	2.97	15.42	6¼	23 3/4	12.80	2.35	15.15	3.75	11.40	4.02
GO-41818	21	358	196.90	10.50	186.40	9.20	195.60	26¼	331 3/4	183.12	8.56	191.68	10.50	181.18	14.42
GO-42838	58	644	213.28	73.21	140.07	23.20	163.27	72½	571½	189.82	20.65	210.47	73.21	137.26	26.01
GO-44424	5	30	14.13	—	14.13	—	14.13	6¼	23 3/4	11.16	—	11.16	—	11.16	2.97
						TOTAL	18191.75							12101.36	6035.55

STATEMENT OF RATES ON SHELL EGGS, COMPARED WITH DRESSED POULTRY, BUTTER, FROZEN EGGS IN CARLOADS FROM CERTAIN ORIGINS WEST OF MISSISSIPPI RIVER TO NEW YORK, N.Y. AND BOSTON, MASS.

TO:

FROM		NEW YORK, N.Y.			BOSTON, MASS.	
	DRESSED POULTRY, BUTTER & EGGS MIN. CL WEIGHT 20,000 LBS.	DRESSED POULTRY, FROZEN EGGS, BUTTER, CHEESE CL MIN. 30,000 LBS. EFFECTIVE 9-11-50	DIFFERENCE	DRESSED POULTRY, BUTTER & EGGS MIN. CL WEIGHT 20,000 LBS.	DRESSED POULTRY, FROZEN EGGS, BUTTER, CHEESE CL MIN. 30,000 LBS. EFFECTIVE 9-11-50	DIFFERENCE
Waseca, Minn.	180	141	39	189	147	42
Marshall, Minn.	203	158	45	213	165	48
Clinton, Iowa	157	114	50	162	119	52
Sioux City, Iowa	195	152	43	206	161	45
Minot, N. Dak.	251	202	49	259	207	52
New Rockford, N. Dak.	232	186	46	240	191	49
Aberdeen, S. Dak.	223	178	45	231	184	47
Watertown, S. Dak.	212	168	44	220	173	47
Beatrice, Nebr.	209	164	45	215	165	50
North Platte, Nebr.	237	194	43	243	201	42
Wichita, Kans.	222	175	47	233	184	49
Clay Center, Kans.	211	169	42	222	178	44
Trenton, Mo.	173	135	38	183	142	41
Springfield, Mo.	198	161	37	205	168	37
Bushnell, Ill.	157	109	48	163	112	51
Marion, Ind.	134	92	42	140	96	44
Defiance, Ohio	122	83	39	128	89	39
Alma, Mich.	133	90	43	134	92	42

Tariff Authorities

Agent Jones 545J ICC 4033
" " 130C ICC 3926
" Boin 107C ICC A-767
" Jones 490B ICC 3642

From West to East Class 45 K
Within Official " 50 K
New Effective Sept. 11
Above Territories Class 35

Average U.S. Loadings EGGS, calendar year 1949,
Authority ICC Statistics, (cars terminated) 13.61 Tons

STATEMENT SHOWING, FOR YEARS 1941 THROUGH 1949, ON ALL CARLOAD FREIGHT, TONS OF REVENUE FREIGHT ORIGINATED, FREIGHT REVENUES, AND FREIGHT CLAIM PAYMENTS MADE; AND SHOWING PERCENT OF CLAIMS PAYMENTS TO REVENUE FOR SAME YEAR AND TO REVENUE FOR PREVIOUS YEAR IN EACH CASE

SOURCES: INTERSTATE COMMERCE COMMISSION FREIGHT COMMODITY STATISTICS
ASSOCIATION OF AMERICAN RAILROADS FREIGHT LOSS AND DAMAGE STATISTICS

YEAR	TONS OF REVENUE FREIGHT ORGINATED	FREIGHT REVENUE IN DOLLARS	TOTAL FREIGHT CLAIM PAYMENTS DUPING YEAR (IN DOLLARS)	PERCENT OF CLAIMS PAYMENTS TO REVENUE	PERCENT OF CLAIMS PAYMENTS CURRENT YEAR TO FREIGHT REVENUE FOR PREVIOUS YEAR
1941	1 209 559 423	4 317 978 117	16 922 665	0.392	
1942	1 403 611 665	5 357 060 708	22 785 054	0.389	0.528
1943	1 462 314 059	6 748 420 695	29 528 430	0.439	0.504
1944	1 471 366 021	6 956 939 440	41 062 900	0.590	0.609
1945	1 404 080 159	6 563 299 959	55 220 285	0.841	0.794
1946	1 342 229 912	5 631 981 906	64 783 630	1.150	0.970
1947	1 514 984 779	6 886 790 061	91 892 375	1.334	1.454
1948	1 488 612 427	7 827 795 556	97 448 436	1.245	1.415
1949	1 213 910 912	6 985 709 676	88 590 929	1.269	1.132

[fol. 217] I. C. C. Docket 30030 and P. & S. Docket 5792

Exhibit 61 Witness: P. Schaefert

Transcript of Recording Used by Swift & Company in Connection With Slide Picture Projections in Training and Instructing Employes Who Handle, Grade, and Pack Eggs at Swift & Company Plants

Hello folks, let's talk about your job. You are an egg candler. By holding an egg up before the light and examining the shadows revealed you judge the quality of an egg. Now maybe you are just a beginner at this job or maybe you are an expert. In either case you will find many things in this film that will interest you and help make your job easier. A funny thing about this job of candling eggs. You handle so many of them every day. Sometimes you stop thinking of them as eggs. They become just things, like marbles or maybe even stones but have you ever stopped to consider just how important and wonderful an egg really is. Actually it is one of the world's best foods. Scientists have discovered the egg to be one of the three most nearly perfect foods, but let me prove that. Here is a little baby suffering from a disease as rickets. The disease is caused by a lack of vitamin D in the diet. Just one egg a day over a period of time would make that baby as strong and healthy and happy as this one. That's how wonderful and powerful a good egg is. Why? Well you see each egg contains a high percentage of those vitamins that are absolutely necessary both for strong vigorous growth and for the maintenance of health in children and adults. A sound egg is a rich source of vitamins, minerals and proteins. An egg a day will go far toward eliminating the necessity of buying vitamins in bottles or capsules, but it must be a good quality egg. That's why your job of candling eggs, your job of judging their quality, is one of the most important activities in the entire egg industry. It's a big job in a mighty big industry.

Today the egg industry is one of the largest and most essential in the entire country. There are more people engaged in producing the eggs than are employed in any

other business. Over 50 billion eggs were produced and sold last year alone and this entire gigantic industry depends on you the candler for profit and success.

You are the one who determines the quality of each egg, insuring that customers will receive the quality they desire. Yes, your's is a mighty important job. It's every bit as important as the job of a scientist in a hospital laboratory who tests the strength and purity of vitamin concentrates. In fact, your's is such an important job that Swift & Company maintains one of the largest food testing laboratories in the world and one of its important activities is to improve and preserve the quality of the eggs you candle. Out of this laboratory have come the thorough methods used to preserve the quality and freshness of Swift eggs. For example, take this latest type triangular oil processing machine now in use in dairy and poultry plants. Yes, this job of egg candling is very important. In it you hold in your hands the national reputation of the company you work for and that's a big responsibility.

[fol. 218] Look at all the harm that just one poorly candled egg can do. Suppose an egg of lower quality is carelessly candled as a Banner Blue and let's suppose it gets by everyone and goes into a Swift Brookfield carton. The grocer who receives it assumes that all the eggs in the carton are up to Swift's usual standards. The customer who buys the eggs assumes the same thing. When the customer discovers that the egg is not up to the quality she expected, what does she think? She reacts pretty much in the same way that any woman would. She decides that the whole dozen is not up to her expectancy. That her dealer sells lower quality eggs for best and that Swift eggs are not graded as advertised. All because of one misgraded egg.

Inasmuch as this job of candling eggs is so important, perhaps it would be wise for us to check over the different factors involved in the job. First, what are we looking for? Shadows of course. The shadows we see within the egg determine its quality, but where do the shadows come from? What does each mean? Let's see what a typical egg is composed of and maybe we will have the answers. The shell of an egg is composed of a substance called calcium carbonate and it's porous. That means its contains tiny

holes far too small for the human eye to see. These tiny holes allow moisture to escape from within the egg and they allow air to seep in. Just inside the shell is a thin covering called the shell membrane. This sticks to the shell except when the egg is boiled. It protects the egg from germs that might come in from the outside air. The egg sack is right next to the shell membrane. This sack holds the yolk and the liquid egg white. Next to the egg sack is a mass of thin, white watery liquid known as the thin white. Toward the center of the egg all around the yolk is a quantity of what is called thick white. It is much thicker than the thin white. The yolk is inside a yolk sack. It is made up of layers of a fatty substance, some of which are light and others which are dark. The yolk sack keeps the yolk mass from breaking. The yolk is suspended in the thick white. It is anchored by two twisted strings known as chalazae. These support the yolk keeping it balanced in the center of the egg. Here then is a drawing of the way a good egg looks just after it has been laid.

An egg like this held up to the light will show few shadows of any kind. There will be a slight yolk shadow because the yolk is a bit darker than the white. When this egg is twirled the yolk will not move out of its center position; therefore, the yolk shadow remains indistinct. That's a perfect egg; however, the condition of a perfect egg soon begins to change unless it is refrigerated immediately after being laid. If the hen remains on the egg too long, if the eggs sit in the sun or in a warm place for any length of time or if the eggs are held for a few days before being sent to the plant to be candled, any of these things will cause the quality of the egg to change in proportion to the exposure suffered, but as the change goes on certain things occur inside the egg which allow you to judge accurately its degree of quality. In the first place, because the shell is porous, that is, has tiny holes, air seeps in and the thin white begins to evaporate. This causes an air space to form at the top of the egg. The longer the egg goes without refrigeration the larger this space will be. A second evidence of quality is the yolk shadow. When the egg is just [fol. 219] laid this shadow can scarcely be seen. As the egg changes in quality the shadow becomes more pronounced,

thus the greater the exposure suffered by the egg the lower the quality and the heavier the shadow and third, as time goes on, a thin liquid seeps from the layer of thick white into the outer thin white. This causes the chalazae or anchor points of the egg to lose their firm position. Thus when the egg is twirled the yolk swings in an off center position closer to the shell as shown in the drawing on the right.

Hence, we have three things to look for in judging the quality of an egg. First the size of the air space and the distinctness of the shadow line. Second, the size and shadow visibility of the yolk and third, the position of the yolk shadow when the egg is twirled. These three points together give you a complete picture of the relative internal quality of any egg.

The actual technique of candling eggs is a simple one, yet as with all trades, there are certain methods used by experts that will help you do a better job in a quicker and easier manner. First stand so that you face the light squarely and so that your eyes are in a direct line with the lamp. Pick up four eggs at a time, two in each hand. Picking up four at a time keeps you from making extra motions. It makes the whole job easier for you. Expert candlers at this point always bell the eggs, i.e., as they pick them up they gently click the two eggs in each hand together. They listen for checked eggs or eggs with broken shells. At this point a checked egg is easy to detect. An unbroken egg sounds like this. A checked egg always sounds something like this: *Always separate checked eggs from sound eggs.*

To candle hold the first egg with your thumb and your first two fingers like this. Keep your thumb well below the center of the egg. This will let more light shine on the egg. Don't push the egg into the light opening. If you did that you wouldn't see the air cell clearly and you would only have to bring the egg out again which makes an extra motion with your hand and extra motions will tire you faster. Instead hold the egg at the light like this so that it just touches the light opening. Tilt the egg at a slight angle. This will show the air cell and the yolk shadows at the same time. Check the air cell size and the yolk shadow.

Then twirl the egg gently by turning your hand around. Watch the position of the yolk shadow as you twirl. After deciding finally on the grade or quality of the egg place it on the grading shelf like this. Don't flip or toss the egg so it turns end over end in the air to land on its end. Don't push or pile the eggs on the shelf. Always handle gently and be sure to place each egg in its proper chute or division. Unless you take care in this final step all your previous work would be wasted; and now let's pause for a moment while the operator turns the record.

So far we have seen what we are looking for in an egg and how to go about candling the egg quickly and most easily. Now comes the most important information in this film. The exact specifications for each grade of Swift & Company eggs: As you know, Swift eggs are divided into five quality grades, Banner Blues, Banner Reds, Mediums, Banner Greens and Glenwoods. Each of these grades has very definite internal quality specifications. Specifications which remain the same week in and week out through [fol. 220] the entire year. They never change. So once you learn them accurately your job is more than half done. The internal quality specifications for each grade are based on the same three things we saw before. First, the size of the air space and distinctness of the shadow line, second, the size and shadow visibility of the yolk and third, the position of the yolk shadow when the egg is twirled.

Now, there are two more points which have to do with the external qualities of the egg. First, the size and weight. Each Swift quality has minimum and maximum weight averages. In addition to containing the internal quality factors, the egg must measure up to the weight limits to be placed in any particular grade. Second, shell cleanliness. Each grade has certain shell cleanliness specifications and eggs must measure up to quality for the grade indicated. Of course grading for this specification is the particular responsibility of the egg packer.

Both the candler and the egg packer should bell all eggs to discover unsegregate chicks. It is the egg packer's responsibility to see that all eggs are packed large end up. This protects the eggs and holds the yolk in its most natural position.

Now let's see what the exact allowances are on each specification for each grade of Swift eggs. First, Swift's Banner Blue. To be a Banner Blue the air space shadow should be no larger than this. The line of the air shell shadow should not be clear. The yolk shadow of a Banner Blue may be visible but it must be sharp or distinct. When twirled the yolk shadow must remain in a center position. It should not move toward the shell. The Banner Blue minimum weight is 23 ounces per dozen. The maximum 27, and finally, the shell of a Banner Blue must be clean and sound. It should contain no dirt of any kind. *Banner Blues must be free from checks.* No egg is a Banner Blue under any circumstances unless it contains these qualities or better. It makes no difference what the time of the year, the weather or anything else. These are the exact specifications for a Banner Blue at all times.

Swift's next grade is the Banner Red. The air space and cell line shadow may be visible but it should be no bigger than this. Also the line may be slightly wavy. The yolk shadow may be visible but it shouldn't be any more distinct than this. When twirled the yolk may move slightly out of its center position but not very far. The minimum weight for Banner Reds is 23 ounces per dozen, the maximum 27. The shell should be practically clean; i.e., the large end must be clean. Small specks and faint dirt are allowed on the sides and small end. *Again, checked eggs must not be included.* These then are the five standards for a Banner Red. Air space shadow may be visible, yolk shadow may be visible, slight yolk movement allowed, shell practically clean, minimum weight 23 ounces, maximum 27. As with the Blue these remain the same month in and month out. No egg is a Banner Red unless it has these specifications.

Banner Red Mediums are a new grade. They have exactly the same quality standards as a Banner Red except for weight. Air space shadow may be visible; yolk shadow may [fol. 221] be visible, slight yolk movement allowed, shell practically clean; however, the minimum weight for Banner Red Mediums is 20 ounces per dozen, maximum 23.

The Banner Green is Swift's next grade. The air space shadow may be visible, but it shouldn't be any larger than

this. The line may be a bit wavy. The yolk shadow can be plainly visible with a slightly ragged outline permissible but it should not be too large. When twirled the yolk can move out of its center position but not too close to the shell. Banner Greens have a minimum weight average of 23 ounces per dozen, maximum 27 and the shell should be reasonably clean. This means the large end must be clean. Traces of dirt are allowed on other parts *but no checked eggs should be included.* Again, an egg is not a Banner Green unless it has these specifications: Air space shadow visible, yolk shadow visible, yolk moves when twirled, shell reasonably clean, minimum weight 23 ounces, maximum 27.

Swift's final grade is the Glenwood. The air space shadow is plainly visible and the shadow line may be sharp. The yolk shadow may be fairly large and plainly visible. Its outline may be ragged. When twirled the yolk shadow may swing out of its center position close to the shell. Glenwood has a minimum weight average of 19 ounces per dozen. The shell itself is fairly clean. Small stains and dirt are allowed anywhere on the shell *but it may not be cracked or broken in any way.*

Now let's look at a grade for grade comparison of each point. Here are the different limits for the air space shadow in each of the five grades. Here are the different limits for the yolk shadows in each grade. Here are the limits for the movement of the yolk shadows when the eggs are twirled in the candler's hands. Here are the different weight limits of the five grades. And lastly, here are the different limits for shell cleanliness in each grade *and no checked eggs are permissible in any of these grades.*

Remember this, these specifications never change. They are the same day after day, month after month, the whole year through. The reason we mention this point again and again is this. You may be going along for weeks getting a certain number of Blues, Reds and Greens out of each lotch you candle and then because of a change in the weather or a change in the farms that are supplying the eggs the actual quality of the eggs may change. This often happens and when it does you may be sorely *attempted* to ignore the specifications. Gee, I am not getting nearly as many Blues and Reds as I have been. I wonder what's the

matter. Maybe I better put more into the Reds and Blues even if they don't come up to specifications. I've got to keep my average up. Lady, don't do it. Even though you mean well, if you candle wrong you will hurt the quality standards of your entire plant.

Here is a case that happened just recently. A certain car of eggs presumably 100% up to Banner Red specifications was shipped out. At destination, the buyer in inspecting the eggs, discovered that six of the girls had done an excellent job. Their eggs fully measured up to Banner Red standards but four of the girls had performed a care-
[fols. 222-223] less job of candling. Their production was far below standard. In fact, so far below that they pulled the entire average way down. The buyer refused to pay Banner Red prices for the whole car. Such reclassifying caused by careless and inaccurate candling can mean the loss of $100 to $200 to your plant and obviously the way to prevent and correct such losses is to give to those candlers indicated on the candling report as needing assistance concentrated attention and help; however, putting eggs in a higher grade than they deserve is not the only way to lose money, putting eggs in a lower grade than they should have is just as bad.

Blues graded as Reds, or Reds graded as Greens are an important loss to your plant. One dozen doesn't matter maybe, but a candler who grades eggs down day after day denies the plant a profit it should have on those eggs and that's just throwing money away. And don't forget, each case that you candle carries your stamp of accurate workmanship. Your manager trusts your judgment. The best, the easiest way to handle this job of yours is to stick to the standards. Always believe what your own eyes tell you. A Banner Blue is always and only a Banner Blue and nothing else. A Banner Red is always and only a Banner Red and so on. Stick to the standards and you will never go wrong. Yes, stick to the standards because it is the very standards that make your job one of the most important in this entire industry. If our customers receive the quality they are promised then they will buy Swift eggs again and again. On this fact depends your future, the future of your company and the future of the egg industry. So all day, every day, stick to the standards.

[fol. 224] PLAINTIFFS' EXHIBIT 4

COMMERCE LAW COMMITTEE
1 Park Avenue
New York 16, N. Y.

6 October 1950

In the Matter of:

I.C.C. Docket No. 30030—Special Regulations—Eggs

Hon. W. P. Bartel,
Secretary
Interstate Commerce Commission
Washington, D. C.

Dear Sir:

In accordance with the requests made during the hearing, the carriers have compiled a Supplement to Exhibit 15 showing damage of record at destination and claims filed on the same cars as were covered by Witness Piehl's origin study.

Copies are being sent to parties of record.

Yours very truly,

A. S. Knowlton, Counsel.

[fol. 225]

I. C. C. Docket 30030

Supplement to Exhibit 15

Witness: W. S. Jensen

Supplement to Exhibit No. 15 Showing Damage of Record at Destination and Claims Filed on Cars Inspected at Origin
April 19 to June 30, 1949

Date Inspected	Car	Number	Eggs Damaged in Dozens: Broken	Leaker	Cracked	Stained	Claim Number and Railroad	Amount Claimed
New York								
4/25	NWX	1379	127	62	72	103	Erie 142184–7	$168.88
4/25	URT	5094		Good Order				
4/25	URT	5050		Good Order				
4/25	URT	1007	308	100	132	240	B & O 458216–34	373.52
4/27	NWX	70065	260	164	136	220	NYC SM–N–8220	325.05
4/28	NWX	2281	78	21	63	98	LV 749477–1	76.14
4/29	NWX	1430	78	—	41	84	LV 753648–1	77.82
4/30	URT	35556	154	68	41	97	NYC DP&Co. 1508	162.05
5/2	URT	35582	204	96	101	199	DLW B49605	245.95
5/2	NWX	70193		Good Order				
5/2	GARX	67005	54	62	123	151	NYC ZG–517	175.61
5/2	NP	91174	60	45	78	117	NYC ZG–518	212.72
5/11	IC	56224	125	83	108	74	Erie 149878–9	177.75
5/13	GARX	9450		Good Order				
5/13	NWX	3262	107	43	52	72	LV 746043–1	139.05
5/16	URT	5058	394	176	182	363	B & O 472578–40	428.69
5/15	NWX	70347	379	152	179	300	DLW B52711	447.44
5/16	NRC	5867	60	57	105	138	NYC ZG–584	166.67
5/23	NWX	2389		Good Order				
5/23	URT	7395	260	93	122	195	Erie 146399–7	294.38
5/23	URT	5057	264	94	138	224	B & O 464736–34	338.70
5/23	URT	5078		Good Order				

[fol. 226-227]

I. C. C. Docket 30030

Supplement to EXHIBIT 15

Witness: W. S. Jensen

Supplement to Exhibit No. 15 Showing Damage of Record at Destination and Claims Filed on Cars Inspected at Origin April 19 to June 30, 1949

Date Inspected	Car	Number	Eggs Damaged in Dozens				Claim Number and Railroad	Amount Claimed
			Broken	Leaker	Cracked	Stained		
Chicago, Ill.								
6/6/49	NWX	70583	14	20	42	—	No record of claim	
5/9/49	MCLX	70125	88	93	119	—	" " " "	
	NWX	2684		Good Order				
	NWX	2646		Good Order				
	NWX	2123		Good Order				
	URT	81221		Good Order				
	MCLX	70126		Good Order				
Boston, Mass.								
6/3/49	NWX	1091	95	—	225	—	B&M 617150-11 Unknown	
6/16/49	NWX	1123	60	—	60	—	No record of claim	
6/16/49	PFE	40312	210	265	647	—	CRIP 498550-11	$292.67
5/31/49	NWX	1078		Good Order				
6/29/49	NWX	4638		Good Order				
Buffalo, N. Y.								
4/26/49	NWX	2065		Good Order				
Scranton, Pa.								
5/26/49	NWX	2250	45	55	105	—	DLW B-51231	$200.49
Durham, N. C.								
	NWX	3937	No destination record					

[fol. 228] PLAINTIFFS' EXHIBIT 5

COMMERCE LAW COMMITTEE—EASTERN RAILROADS
One Park Avenue,
New York 16, N.Y.

Alfred S. Knowlton
Counsel and Secretary

February 16, 1950

Subject: I.C.C. Docket No. 30030—Special Regulations—Eggs.

Mr. Richard F. Mitchell,
Commissioner,
Interstate Commerce Commission,
Washington, D. C.

Dear Mr. Commissioner:

At the hearing on February 8, 1950, you requested the railroads to furnish for the year of 1949:

1. The number of cars of eggs delivered at New York,
2. The claims filed,
3. The claims paid by each road.

There is attached hereto marked Witness E. A. Hodkinson, Exhibit No. "X", a "Summary of Cars of Shell Eggs Unloaded at New York During the Year 1949 and Amount of Claims Recommended on These Cars to December 31, 1949."

Mr. Hodkinson compiled this statement in a manner to detail the information specifically on each railroad. You will note that the statement shows that there are some cars which were considered "Bad Order" upon which claims have not yet been received.

There is also attached as Witness E. A. Hodkinson Exhibit No. "Y", a "Summary of Cars of Shell Eggs Unloaded at New York During the Year 1948 and Amount of Claims Recommended on These Cars to December 31, 1949 —All Railroads." You will note that this statement is a practically complete statement of claims for that year. I do not recollect definitely whether this statement was

specifically requested, but you indicated a desire that the claim figures be kept up to date and Mr. Hodkinson's exhibit is submitted in response thereto.

For your information, the data on deliveries in 1950 is being currently compiled upon a basis which will give us more complete information than was available in 1949 or the past.

Copies of this letter and the exhibits are being sent to parties of record.

Yours very truly,

A. S. Knowlton, Counsel.

ASK:JR:JF.

[fol. 229] I. C. C. Docket No. 30030

EXHIBIT No. (X)

Witness: E. A. Hodkinson

Summary of Cars of Shell Eggs Unloaded at New York During the Year 1949 and Amounts Recommended on These Cars to December 31, 1949.

	Cars	Amount Claimed	Amount Recommended
B&O RR			
Bad order cars with claims	256	$ 82,034.90	$ 78,545.21
Bad order cars with claims under investigation	1	382.26	
Bad order cars without claims to December 31, 1949	50		
Cars delivered good order	174		
C RR of N. J.			
Bad order cars with claims	2	437.46	428.21
Bad order cars without claims to December 31, 1949	7		
Cars delivered good order	1		
D L & W			
Bad order cars with claims	116	24,322.61	23,229.15
Bad order cars without claims to December 31, 1949	42		
Cars delivered good order	102		
Erie			
Bad order cars with claims	402	107,364.88	103,350.07
Bad order cars with claims under investigation	2	751.05	
Bad order cars without claims to December 31, 1949	87		
Cars delivered good order	367		

EXHIBIT No. (X)—Continued

	Cars	Amount Claimed	Amount Recommended
Lehigh Valley			
Bad order cars with claims	52	5,361.97	4,417.65
Bad order cars with claims under investigation	1	39.92	
Bad order cars without claims to December 31, 1949	29		
Cars delivered good order	103		
Long Island			
Bad order cars with claims	69	19,267.91	17,709.93
Bad order cars without claims to December 31, 1949	33		
Cars delivered good order	77		
New York Central			
Bad order cars with claims	356	93,506.28	86,148.21
Bad order cars with claims under investigation	3	1,647.81	
Bad order cars without claims to December 31, 1949	47		
Cars delivered good order	243		
Pennsylvania RR			
Bad order cars with claims	40	10,237.15	8,730.71
Bad order cars rejected to carrier	1		
Bad order cars without claims to December 31, 1949	5		
Cars delivered good order	25		
Totals	2,693	$345,354.20	$322,359.14

February 16, 1950

[fol. 231-232] I. C. C. Docket No. 30030

EXHIBIT No. (Y)

Witness: E. A. Hodkinson

Summary of Cars of Shell Eggs Unloaded at New York During the Year 1948 and Amount of Claims Recommended on These Cars to December 31, 1949—All Railroads.

	Number of Cars	Amount Recommended
Bad order cars with claims	3,543	$802,198.58
Bad order cars with no claim information	27	
Claims returned for futher information	3	
Cars rejected to carriers	4	
Total Bad Order Cars	3,577	
Cars Delivered Good Order	1,983	
	5,560	

February 16, 1950

5/23	URT	7458	74	54	93	109	Erie 147355–7	181.26
5/23	URT	7297		Good Order				
5/23	URT	50729	216	55	61	148	Erie 146398–7	229.39
5/24	NWX	70310	1210	414	1256	1571	B & O 466592–40	1331.62
5/23	MCLX	70358		Good Order				
5/31	NWX	70426	127	152	178	83	No claim received RPIA	
5/17	NWX	70567		Good Order				
5/31	SFRD	32767		Good Order				
6/6	IC	58270	246	135	166	233	Erie 154987–7	336.34
6/8	URT	35637		Good Order				
6/13	GARX	90661	84	51	49	116	B & O 472572–40	159.05
6/13	NWX	3114		Good Order				
6/16	MUNX	3339	117	88	75	148	IC K–726508–45	176.45
6/20	URT	5067		Good Order				
6/20	URT	11500	339	154	213	184	B & O 472560–34	376.49
6/27	URT	37167	383	153	190	372	B & O 476041–34	434.72
6/23	MUNX	3370		Good Order				
6/27	IC	58249	107	48	60	97	B & O 474757–34	144.57
6/27	NWX	4514	48	42	105	135	NYC ZG–748	163.93
6/28	NWX	2741	177	75	84	159	DLW B55921	212.28
6/27	NWX	3188	129	36	64	101	Erie 152645–7	171.21
6/29	URT	81320	279	101	139	262	B & O 479049–40	311.48
7/5	NWX	2101	177	47	64	112	DLW B55920	188.32

[fol. 233] PLAINTIFFS' EXHIBIT 6

COMMERCE LAW COMMITTEE—EASTERN RAILROADS

One Park Avenue
New York 16, N.Y.

Alfred S. Knowlton,
Counsel and Secretary

3 November 1950

I.C.C. Docket No. 30030—Special Regulation—Eggs.
Hon. W. P. Bartel, Secretary
Interstate Commerce Commission
Washington 25, D. C.

Dear Sir:

A revised Exhibit 15 showing car numbers was mailed to Mr. W. D. Matson yesterday.

This will certify that the parties of record have been served today.

Very truly yours,

A. S. Knowlton, Counsel.

ASK/EMT

c.c. Mr. R. F. Mitchell

[fol. 234]

I. C. C. Docket 30030

Revised Exhibit 15

Witness: F. A. Piehl

Revised Statement to Include Car Numbers of Record of Western Weighing & Inspection Bureau Shipping Point Inspections of Shell Eggs, Period April 19 to June 30, 1949

Date Insp'd	Point of Origin	Car Number	Number Stained-Dirty	Number Checks	Number Broken	Per Cent Checks & Broken
4/19/49	Jessup, Ia.	NWX 1379	0	15	0	1.00
4/19/49	Sumner, Ia.	NWX 2684	0	31	4	2.33
4/20/49	Sumner, Ia.	NWX 2646	0	36	1	2.46
4/20/49	Tripoli, Ia.	URT 5094	0	33	3	2.4
4/20/49	Tripoli, Ia.	URT 5050	0	25	1	1.73
4/20/49	Tripoli, Ia.	URT 1007	0	18	1	1.26
4/22/49	Vinton, Ia.	NWX 2065	1	13	1	93
4/22/49	Tama, Ia.	NWX 70065	13	52	6	3.86
4/23/49	Dyersville, Ia.	NWX 2281	68	30	7	2.46
4/23/49	Dyersville, Ia.	NWX 1430	0	13	3	1.06
4/25/49	Edgewood, Ia.	URT 35556	0	21	2	1.53
4/26/49	Carles City, Ia.	URT 35582	0	25	1	1.73
4/27/49	Mason City, Ia.	NWX 70193	1	29	2	2.06
4/27/49	Clarion, Ia.	GARX 67005	0	32	0	2.13
4/28/49	Iowa Falls, Ia.	NP 91174	0	28	5	2.2
4/28/49	Hubbard, Ia.	NWX 1091	0	30	2	2.13
5/3/49	Kasson, Minn.	MCLX 70125	0	35	1	2.4
5/6/49	George, Ia.	IC 56224	1	27	0	1.8
5/9/49	Iowa Falls, Ia.	GARX 9450	0	22	0	1.46
5/9/49	Iowa Falls, Ia.	NWX 3262	0	32	5	2.46
5/10/49	Hubbard, Ia.	NWX 1123	0	32	0	2.13
5/10/49	Iowa Falls, Ia.	PFE 40312	0	29	1	2.00
5/11/49	Marshalltown, Ia.	URT 5058	88	69	2	4.73
5/11/49	Hubbard, Ia.	NWX 70347	0	20	0	1.33
5/11/49	Iowa Falls, Ia.	NRC 5867	0	54	7	4.06
5/17/49	Decorah, Ia.	NWX 2389	0	16	0	1.06
5/18/49	Tripoli, Ia.	URT 7395	0	40	0	2.66
5/18/49	Tripoli, Ia.	URT 5057	0	29	1	2.00
5/18/49	Tripoli, Ia.	URT 5078	0	51	0	3.4
5/18/49	Tripoli, Ia.	URT 7458	0	55	0	3.66
5/18/49	Tripoli, Ia.	URT 7279	0	40	0	2.66
5/18/49	Tripoli, Ia.	URT 50729	0	33	0	2.2
5/19/49	Charles City, Ia.	NWX 70310	0	61	1	4.13
5/19/49	Mason City, Ia.	NWX 70358	0	38	2	2.66
5/20/49	Algona, Ia.	NWX 2250	0	33	0	2.2
5/24/49	Guthrie Center, Ia.	NWX 70426	0	101	8	7.26
5/12/49	Hubbard, Ia.	NWX 70567	1	43	1	2.93
5/26/49	Hubbard, Ia.	NWX 1078	0	68	1	4.6
5/26/49	Iowa Falls, Ia.	RD 32767	6	42	2	2.93

[fol. 235]

6/1/49	George, Ia.	IC 58270	0	52	0	3.46
6/2/49	Sheldon, Ia.	NWX 70583	0	46	0	3.06
6/3/49	Hartley, Ia.	URT 35637	0	61	2	4.2
6/7/49	Iowa Falls, Ia.	GARX 90661	0	49	2	3.4
6/7/49	Iowa Falls, Ia.	NWX 3114	1	46	2	3.2
6/9/49	Central City, Ia.	MUNX 3339	0	55	2	3.8
6/14/49	Decorah, Ia.	NWX 3937	0	26	1	1.8
6/15/49	Tripoli, Ia.	URT 5067	0	52	1	3.56

REVISED EXHIBIT 15—Continued

Date Insp'd	Point of Origin	Car Number	Number Stained-Dirty	Number Checks	Number Broken	Per Cent Checks & Broken
6/15/49	Sumner, Ia.	URT 81221	0	55	1	3.73
6/15/49	Tripoli, Ia.	URT 11500	0	31	0	2.06
6/18/49	Strawberry Point, Ia.	URT 37167	1	37	2	2.6
6/17/49	Independence, Ia.	MUNX 3370	0	34	3	2.46
6/20/49	Jessup, Ia.	IC 58249	0	26	0	1.73
6/21/49	Charles City, Ia.	MCLX 70126	0	34	1	2.33
6/21/49	Iowa Falls, Ia.	NWX 4514	0	35	0	2.33
6/22/49	Hubbard, Ia.	NWX 4638	0	27	1	1.86
6/22/49	Hubbard, Ia.	NWX 2741	0	30	0	2.00
6/22/49	Iowa Falls, Ia.	NWX 3188	0	33	2	2.33
6/23/49	Strawberry Point, Ia.	URT 81320	0	26	4	2.00
6/29/49	Hubbard, Ia.	NWX 2123	2	62	3	4.33
6/29/49	Hubbard, Ia.	NWX 2101	0	38	0	2.53
Total—60 Cars			183	2,256	98	2.61

[fols. 236-237] DEFENDANTS' EXHIBIT "A"

ORDER

At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D. C., on the 23rd day of July, A.D., 1948.

No. 30030

Special Regulations—Eggs

The said division having under consideration the matter of special regulations governing description, marks, inspection and delivery, and the handling of claims thereunder, applicable in connection with the transportation, in interstate or foreign commerce, of eggs from, to and between points in the United States, as published in Note 5 of Supplement No. 2 to Consolidated Freight Classification No. 18, Agents A. H. Greenly's I.C.C.-O.C. No. 62, Robert E. Boyle's, Jr. I.C.C. No. 106, Geo. H. Dumas' I.C.C. No. 31 and R.G. Raasch's I.C.C. No. 642; and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby instituted by the said division, upon its own motion, into and concerning the reasonableness and otherwise lawful-

ness, of the regulations described in the next preceding paragraph hereof, with the view to making such finding in the premises and prescribing such just, reasonable and otherwise lawful rules, regulations and practices, as the facts and circumstances shall appear to warrant.

It is further ordered, That all common carriers of property by railroad parties to the said tariff schedules be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of the respondents; and that notice to the public be given by posting a copy of this order in the office of the Secretary of the Commission.

And it is further ordered, That this proceeding be, and the same is hereby, assigned for hearing September 23, 1948, 8:30 o'clock A.M., United States Standard Time (9:30 A.M. District of Columbia Daylight Saving Time), at the office of the Interstate Commerce Commission, Washington, D. C., before Examiner Barber.

By the Commission, Division 2.

W. P. Bartel, Secretary.

(Here follows 3 Photolithographs, side folios 238, 239, 240)

DEFENDANTS' EXHIBIT "B"

Subject to TARIFFS OF INCREASED RATES AND CHARGES Nos. X-168 and X-176, or successive issues thereof referred to in Classification, as amended.

SUPPLEMENT No. ©10
Supplements Nos. 1, 3, 5, 6, 8, 9 and 10 contain all changes
(Supplement No. 1 contains suspension notice)

©Not applicable on California intrastate traffic.

TO

AGENT W. S. FLINT'S	C.T.C.-O.C.No.64	I.C.C.-F.F.-O.C.No.6	M.F.-I.C.C.-O.C.No. 11	I.C.C.-O.C.No.64
ALT.AGENT A.H.CARSON'S	C.T.C.-S.C.No.31	I.C.C.-F.F.-S.C.No.15	M.F.-I.C.C.No.35	I.C.C.No.109
AGENT GEO. H. DUMAS'	C.T.C.-W.C.No.31	I.C.C.-F.F.-W.C.No.6	M.F.-I.C.C.No. 11	I.C.C.No.33
AGENT R. G. RAASCH'S		I.C.C.-F.F.-I.C.No.12	M.F.-I.C.C.No.79	I.C.C.No.732

A. P. S. C.-S. C. No. 16.
ARK. R. C.-W. C. No. 18.
CAL. P. U. C.-W. C. No. 8.
P. U. C. COLO.-W. C. No. 24.
CONN. P. U. C.-M. F.-O. C. No. 11.
P. U. C. IDAHO-W. C. No. 23.
ILL. C. C.-O. C. No. 64.
ILL. C. C.-W. C. No. 22.
ILL. C. C.-I. C. No. 373.
I. R. C.-O. C. No. 64.
I. R. C.-I. C. No. 196.
IA. R. C.-W. C. No. 16.
K. C. C. DOCKET 42232-R.
K. R. C. No. 20.
ME.-P. U. C.-O. C. No. 64.
P. S. C.-MD.-O. C. No. 64.
M. D. P. U.-O. C. No. 64.
M. P. S. C.-O. C. No. 64.
M. P. S. C.-W. C. No. 21.
M. R. C.-W. C. No. 20.
P. S. C. MO.-O. C. No. 64.
P. S. C. MO.-S. C. No. 15.
P. S. C. MO.-W. C. No. 24.
P. S. C. MO.-I. C. No. 91.
MONT. R. C.-W. C. No. 18.
N. S. R. C.-W. C. No. 18.
P. S. C. N.-W. C. No. 20.
N. H.-P. S. C.-O. C. No. 64.
P. U. C. N. J.-O. C. No. 64.
S. C. C. N. M.-W. C. No. 22.
P. S. C. N. Y.-O. C. No. 64.
P. S. C.-N. Y.-M. T.-O. C. No. 7.
N. C. U. C.-S. C. No. 17.
N. D. P. S. C.-W. C. No. 8.
OHIO-O. C. No. 64.
C. C. OKLA.-W. C. No. 22.
P. U. C. ORE.-W. C. No. 15.
PA. P. U. C.-O. C. No. 64.
R. I.-P. U. A.-O. C. No. 64.
R. C. T.-W. C. No. 20.
P. S. C. UTAH-W. C. No. 21.
V. C. C.-O. C. No. 64.
V. C. C.-S. C. No. 42.
V.-P. S. C.-O. C. No. 64.
WN. T.-W. C. No. 16.
P. S. C.-W. VA.-O. C. No. 64.
P. S. C. WYO.-W. C. No. 23.
S. B.-O. C. No. 18.
U. S. M. C. No. 4.

CONSOLIDATED FREIGHT CLASSIFICATION No. 20

IA. R. C.-W. C. No. 16. MONT. R. C.-W. C. No. 18. P. U. C. ORE.-W. C. No. 15.

CONSOLIDATED FREIGHT CLASSIFICATION No. 20

OFFICIAL CLASSIFICATION No. 64.
WESTERN CLASSIFICATION No. 75.

SOUTHERN CLASSIFICATION No. 63.
ILLINOIS CLASSIFICATION No. 28.

RATINGS, RULES AND REGULATIONS

APPLICABLE TO

FREIGHT TRAFFIC COVERED BY TARIFFS GOVERNED BY THE OFFICIAL, SOUTHERN, WESTERN OR ILLINOIS CLASSIFICATION, AS SUCH TARIFFS MAY SPECIFY.

Concerning the correction of Fourth Section departures resulting from changes in this classification (or these classifications), see Rule 44, page 154 of Classification.

ISSUED MARCH 8, 1952 **EFFECTIVE APRIL 18, 1952**

W. S. FLINT,
Agent for lines in
Official Classification
One Park Ave. at 33rd St.,
NEW YORK (16), N. Y.

A. H. CARSON,
Alternate Agent for lines in
Southern Classification
101 Marietta Street,
ATLANTA (3), GA.

R. G. RAASCH,
Agent for lines in
Illinois Classification
236 Union Station,
CHICAGO (6), ILL.

GEO. H. DUMAS,
Agent for lines in
Western Classification
202 Union Station,
CHICAGO (6), ILL.

(Edw. Keogh Ptg. Co., Chicago—15267)

PARTICIPATING CARRIERS

The list of participating carriers are shown in Classification and effective supplements.

Item	Cancels Item (Original issue, except as noted)	ARTICLES	Less Carload Ratings	Carload Minimum (Pounds)	Carload Ratings
		DAIRY PRODUCTS:			
14555-A	14555	**Eggs, noibn,** see Notes 5, items 14560-A to 14589 and 6, item 14590:			
		In packages complying with specifications for package 512 or 893, see Notes 7, 8, 9 and 10, incl., items 14595, 14600, 14601 and 14602	2	20,000	65-60-3
		In packages not complying with specifications for package 512 or 893, or not complying with requirements of Notes 8 and 9, items 14600 and 14601, see Note 10, item 14602	1	20,000	2
14560-A	14560	♦Note 5.—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.			
14565-A	14565	**Section 1.**—Shippers of eggs must place the following information on shipping order and bill of lading: (a) Total number of packages. (b) Type of package (wooden or fibreboard) and number of each type and capacity. (c) Number of packages that do not contain full number of eggs for which the package is intended, and the actual extent of such shortage. (d) Number of packages entirely containing checked, cracked, stained or dirty eggs.			
14570-A	14570	**Section 2.**—Upon arrival of shipment at point of delivery, the consignee or his authorized representative shall have the privilege of opening each package, at no expense to the carrier (see Section 8), and of initially examining the contents thereof; provided, however, on notice by the carrier, such initial examination shall be in the presence of the carrier's representative. If any package contains eggs having shell damage for which the carriers may be deemed responsible, the contents of such package shall be jointly inspected by the consignee and the carrier, or their authorized representatives. Any damage to the eggs shall be jointly recorded by the consignee and the carrier, or their authorized representatives, and such joint record shall be conclusive as to the nature and extent of damage.			
14575-A	14575	**Section 3.**—The examination by consignee and joint inspection by consignee and carrier, provided for in Section 2 of this Note, shall be made before the shipment is removed from carrier's possession, except where the carrier agrees that the joint examination, or both the examination and joint inspection, may be made elsewhere and within a specific period of time after actual delivery of the shipment by the carrier into possession of consignee or his			

any package contains eggs having shell damage for which the carriers may be deemed responsible, the contents of such package shall be jointly inspected by the consignee and the carrier, or their authorized representatives. Any damage to the eggs shall be jointly recorded by the consignee and the carrier, or their authorized representatives, and such joint record shall be conclusive as to the nature and extent of damage.

14575-A 14575 Section 3.—The examination by consignee and joint inspection by consignee and carrier, provided for in Section 2 of this Note, shall be made before the shipment is removed from carrier's possession, except where the carrier agrees that the joint examination, or both the examination and joint inspection, may be made elsewhere and within a specific period of time after actual delivery of the shipment by the carrier into possession of consignee or his designated agent. The carrier shall have the right to place identifying marks upon any package to be inspected.

14580-A 14580 **Section 4.**—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint inspection of the entire contents of the shipment to determine the damage from such causes.

14585-A 14585 **Section 5.**—On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

14586-A 14586 **Section 6.**—On eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 3% of the contents of the packages containing damaged eggs. Where damage exceeds 3%, claims shall be allowed for all damage in excess of 3%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 2%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 3% specified in this Section.

14587-A 14587 **Section 7.**—On eggs placed in packages at points other than the rail point of origin, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 5% of the contents of the packages containing damaged eggs. Where damage exceeds 5% claims shall be allowed in excess of 5%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 4%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 5% specified in this Section.

12860

SUPPLEMENT No. 10 TO CONSOLIDATED FREIGHT CLASSIFICATION NUMBER 20

Item	Cancels Item (Original issue, except as noted)	ARTICLES	Less Carload Ratings	Carload Minimum (Pounds)	Carload Ratings
		DAIRY PRODUCTS—Concluded: Eggs, noibn—Concluded: Note 5.—Concluded:			
14588	.....	**Section 8.**—No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier liability, actual and necessary charges incurred for labor and material, as verified by carrier representative, in reconditioning each package in which verified damage exceeds the percentages stated or otherwise provided for in Section 6 or Section 7 of this Note, whichever is applicable, shall be borne by the carrier. If, by reconditioning any damaged package or contents, there shall result an enhanced value because of such reconditioning of such package or contents, such increased value shall be credited to the claim.			
14589	.....	**Section 9.**—Where the application of percentages stated or otherwise provided for in Section 6 or Section 7 of this Note result in fractions of one egg, such fractions shall be increased to the next whole number.			

(P. 240)

[fol. 241] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1954

Nos. 171, 282

SECRETARY OF AGRICULTURE OF THE UNITED STATES, Appellant

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, et al.

Nos. 172, 283

UTAH POULTRY & FARMERS COOPERATIVE, a Utah Corporation, et al., Appellants

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, et al.

STATEMENT BY APPELLANTS OF POINTS TO BE RELIED ON

The Secretary of Agriculture of the United States, Utah Poultry & Farmers Cooperative, Armour & Company, and Swift & Company hereby adopt for their statement of points upon which they intend to rely, in their appeals to this Court, the points contained in their Assignments of Errors filed herein.

Neil Brooks, Associate Solicitor, United States Department of Agriculture, John H. Pratt, Attorney for Utah Poultry & Farmers Cooperative, Marcus Whiting, Attorney for Armour and Company, John P. Staley, Attorney for Swift & Company.

[fol. 242] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

Nos. 171, 172, 282 & 283

SECRETARY OF AGRICULTURE OF THE UNITED STATES, Appellant

vs.

UNITED STATES OF AMERICA et al.;

UTAH POULTRY & FARMERS COOPERATIVE et al., Appellants,

vs.

UNITED STATES OF AMERICA et al.;

SECRETARY OF AGRICULTURE OF THE UNITED STATES, Appellant

vs.

UNITED STATES OF AMERICA et al.; and

UTAH POULTRY & FARMERS COOPERATIVE et al., Appellants,

vs.

UNITED STATES OF AMERICA et al.

ORDER NOTING PROBABLE JURISDICTION—October 14, 1954

Appeals from the United States District Court for the District of Utah.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of two hours allowed for oral argument.

October 14, 1954.

LIBRARY
SUPREME COURT, U.S.

Nos. 171-252

In the Supreme Court of the United States

OCTOBER TERM, 1954

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

STATEMENT AS TO JURISDICTION

ROBERT L. FARRINGTON,
Solicitor, Department of Agriculture.
NEIL BROOKS,
Associate Solicitor,
DONALD A. CAMPBELL,
Counsel for Appellants.

In the United States District Court for the District of Utah, Central Division

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Civil Action No. C-8-53

UTAH POULTRY & FARMERS COOPERATIVE, PLAINTIFF

THE SECRETARY OF AGRICULTURE OF THE UNITED STATES ET AL., INTERVENING PLAINTIFFS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

STATEMENT OF THE SECRETARY OF AGRICULTURE AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, the appellant Secretary of Agriculture (an intervening plaintiff in the case) submits herewith his statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order and judgment of the District Court of three judges entered in this cause.

OPINION BELOW

The opinion of the United States District Court for the District of Utah, Central Division,

has not yet been reported. A copy of the opinion and final judgment are attached hereto as Appendix A.

JURISDICTION[1]

This proceeding was instituted to enjoin and set aside the order of the Interstate Commerce Commission dated February 4, 1952, approving damage "tolerances" as to shell eggs transported in interstate commerce by railroads, and in accordance with the requirement in 28 U. S. C. 1952 ed. § 2325 the cause was heard by a District Court of three judges. The Court below, on March 10, 1954, denied the applications to set aside and to enjoin the enforcement of, the Commission's order. A question may arise as to whether the District Court has entered a "judgment, order or decree" within the meaning of 28 U. S. C. 1952 ed. § 2101 (b) or an "order" within the meaning of 28 U. S. C. 1952 ed. § 1253. The District Court, by its action on March 10, 1954, determined that the Commission had authority, under the Interstate Commerce Act, to approve the challenged "damage tolerance" regulations, and that the findings of the Commission are supported by substantial evidence. The lengthy opinion of the Court discloses the definitive character of its decision, and a docket entry was appropriately

[1] (CLERK'S NOTE.—The statements as to jurisdiction in Nos. 171 and 282 differ only insofar as the paragraphs devoted to "Jurisdiction" is concerned. The paragraph devoted to that subject in No. 282 is printed *infra*, p. 23.)

made. The question as to whether a judgment or order has been entered does not "turn on the adjective" which the Court chose to use in the caption of its decision (*Federal Trade Commission* v. *Minneapolis-Honeywell Co.*, 344 U. S. 206, 212) and a document labeled "opinion" may be the final judgment of the Court (see *e. g., In re Forstner Chain Corporation*, 177 F. 2d 572, 574–578 (C. A. 1)). Although it appears that the action of the Court in the present case may be further formalized at a future date, such further action does not extend the time for filing an appeal if the original action by the Court was an order, judgment, or decree. *Federal Trade Commission* v. *Minneapolis-Honeywell Co.*, 344 U. S. 206, 212–213. Accordingly, a petition for appeal, from the Court's order, judgment or decree of March 10, 1954, is presented to the District Court herewith, to wit, May 7, 1954. The jurisdiction of the Supreme Court to review this order and judgment by direct appeal is invoked under 28 U. S. C. 1952 ed. §§ 1253 and 2101 (b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment of the District Court on direct appeal in this case: *American Trucking Assns.* v. *United States*, 326 U. S. 77; *Alabama G. S. R. Co.* v. *United States*, 340 U. S. 216; *American Trucking Assns.* v. *United States*, 344 U. S. 298.

The Secretary of Agriculture intervened, as a matter of right, under Rule 24 (a) of the Federal

Rules of Civil Procedure, in the action in the District Court. The right of the Secretary of Agriculture to participate in the District Court action and to appeal from the judgment of the District Court is conferred by § 201 (b) of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, 36, 7 U. S. C. 1952 ed. § 1291 (b)); by § 203 (j) of the Agricultural Marketing Act of 1946 (60 Stat. 1087, 1088–1089, 7 U. S. C. 1952 ed. § 1622 (j)); by § 17 (9) of Interstate Commerce Act (54 Stat. 916, 49 U. S. C. § 17 (9)); by 28 U. S. C. 1952 ed. §§ 1253 and 2323; and by § 10 of the Administrative Procedure Act (60 Stat. 243, 5 U. S. C. 1952 ed. § 1009). It is provided, *inter alia*, in § 201 (b) of the Agricultural Adjustment Act of 1938 that in cases with respect to rates, charges, tariffs, and practices relating to the transportation of farm products where the Secretary is a party before the Interstate Commerce Commission he shall have "the rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination" (7 U. S. C. 1952 ed. § 1291 (b)).

QUESTIONS PRESENTED

The primary question on appeal is whether tariff rules—*i. e.*, rules which state that no claim for damage to shell eggs shall be allowed unless the damage to the eggs at destination exceeds

designated percentages, and where the damage exceeds the stated percentages claims shall be allowed only for damage in excess of the stated percentages—limit common carrier liability, and therefore are unlawful and void under § 20 (11) of the Interstate Commerce Act.

In addition, the following subsidiary questions are presented:

1. Whether the phrase "caused by it" in § 20 (11) of the Act—which states that a carrier is liable for the "full actual loss, damage, or injury to * * * property caused by it"—changes the common law liability of a carrier so as to require proof of actual negligence?

2. Whether the susceptibility of eggs to breakage by the application of force is an "inherent vice" within the meaning of the "inherent vice" exception to strict common carrier liability for loss or damage to property where the carrier is free from negligence and the damage arises solely from the nature and inherent character of the property without intervening human agency.

3. Whether the Commission's order approving damage tolerances for shell eggs, and exempting railroads from all liability for damage within the stated tolerances, is supported by adequate findings and substantial evidence on the record as a whole.

4. All other questions raised in the assignment of errors are also presented.

STATUTES INVOLVED

Sections 202 and 203 (j) of the Agricultural Marketing Act of 1946 (7 U. S. C. §§ 1621, 1622 (j)); § 201 (a) and (b) of the Agricultural Adjustment Act of 1938 (7 U. S. C. § 1291 (a) and (b)); and § 20 (11) of the Interstate Commerce Act, as amended (49 U. S. C. § 20 (11)) and the National Transportation Policy preceding § 1 of the Interstate Commerce Act, as amended, are set forth in Appendix B hereto.

STATEMENT

This action was instituted in the United States District Court for the District of Utah, Central Division, by the Utah Poultry & Farmers Cooperative against the Interstate Commerce Commission and the United States to enjoin and set aside the order of the Interstate Commerce Commission dated February 4, 1952, approving damage "tolerances" as to shell eggs transported in interstate commerce by railroads. The United States was made a defendant in accordance with the requirement in 28 U. S. C. 1952 ed. § 2322, but the United States filed an answer admitting all of the allegations in the complaint, and the United States filed a joint brief in the District Court with the Secretary of Agriculture.

The Secretary of Agriculture of the United States, Swift & Company, and Armour & Company intervened as plaintiffs in the District

Court, and 131 railroads intervened as defendants. The Secretary of Agriculture intervened under Rule 24 (a) of the Federal Rules of Civil Procedure in accordance with § 201 of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, 36, 7 U. S. C. 1952 ed. § 1291), which authorizes the Secretary to participate as a party in proceedings before the Interstate Commerce Commission with respect to "rates, charges, tariffs, and practices relating to the transportation of farm products * * *" (7 U. S. C. 1952 ed. § 1291 (a)), and in such cases "the Secretary shall have the rights of a party before the Commission and the rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination" (7 U. S. C. 1952 ed. § 1291 (b)).

The administrative proceedings, which culminated in the order by the Commission of February 4, 1952, was instituted by the Commission's order of July 23, 1948, ordering an investigation of the "reasonableness and otherwise lawfulness" of regulations proposed by the railroads relating to their liability for damage to shell eggs. The

[2] Other parties also appeared in the administrative proceeding in opposition to the proposed damage tolerance regulations, including the National Poultry, Butter and Egg Association and the Secretary of the Army, representing by delegation from General Services Administration, the Government agencies which are affected as shippers by the damage tolerance regulations.

Commission's order initiating the investigation permitted the proposed regulations to become effective on July 24, 1948, pending the hearing as to their lawfulness. Under the tariff regulations in effect prior to July 24, 1948, there were no limitations as to the liability of a railroad for damage to shell eggs, other than "current receipts."[3] With respect to "current receipts," the Commission had approved in 1919 a tariff rule limiting the liability of carriers for damage to shipments of "current receipts" to damage in excess of five percent of the total number of eggs. *National Poultry, Butter & Egg Association et al.* v. *New York Central Railroad Co., et al.*, 52 I. C. C. 47. The basis for the Commission's decision in 1919 was the "assumption that the shippers ordinarily pack into cases of 30 dozen eggs (of current re-receipts) approximately 18 broken or damaged eggs" (*Id.* at p. 49). But inasmuch as the evidence introduced in that proceeding showed that there was no such practice with respect to eggs other than "current receipts" the Commission held that it "is unreasonable to continue to apply such a rule to shipments of storage-packed eggs or to shipments of

[3] "The term 'current receipts' is used to describe run-of-the-nest eggs as received at the farms, ranches, and packing plants, before candling, grading, segregation of damaged eggs, and repacking. Such eggs contain every variety of size, color, and grade, as well as a proportion of checked, broken, cracked, leakers, stained, and dirty eggs." *Special Regulations, Eggs*, 284 I. C. C. 377, 383.

current receipts when thoroughly rehandled and repacked in new cases with new standard fillers" (*Id.* at pp. 49-50). Hence under the regulations as approved in 1919 and in effect prior to July 24, 1948, the carriers presumably paid for all damage to shell eggs *resulting from the shipment by rail.*

The Commission found that, under those regulations, "the carriers were paying large claims for damage to shipments of shell eggs," and that in "an effort to improve that situation" the carriers proposed the regulations which resulted in the initial investigation by the Commission in this case. *Special Regulations, Eggs,* 284 I. C. C. 377, 380. Under the proposed regulations, "claims for actual damage" would apply only to eggs packaged at the point of origin of the rail shipment. *Special Regulations, Eggs,* 284 I. C. C. 377, 381. On all eggs not packaged at the rail point of origin, the carriers would pay only for damage in excess of five percent.[4] *Ibid.*

During the course of the hearing on those regulations, the carriers filed new schedules containing proposed regulations which increased the damage tolerance on eggs not placed in packages at the rail point of origin from five to six percent, and, in addition, the new regulations contained a

[4] The validity of the damage tolerance as applied to "current receipts" was never litigated. "Current receipts" are not shipped commercially to any large extent. *Special Regulations, Eggs.* 284, I. C. C. 377, 383.

damage tolerance of four percent for eggs placed in packages at the rail point of origin. Under the new proposed regulations, the carriers would be responsible only for damage in excess of the four percent or six percent "tolerances." *Special Regulations, Eggs*, 284 I. C. C. 377, 382. The new regulations also provided that where *bona fide* grading certificates of Federal and State egg-inspection agencies show the extent of physical damage to eggs determined at the rail point of origin of the shipment immediately prior to tender thereof for rail transportation the percentage of actual damage as shown on such grading certificates, plus one percent, shall be used in lieu of the four and six percent, respectively, heretofore indicated. *Ibid.* These are the regulations which were approved by the Commission in the order now subject to review, except that the Commission approved the proposed damage tolerances in the amount of five percent and three percent in lieu of the carriers' proposed tolerances of six percent and four percent.[5]

Claims for damage to shipments of shell eggs by rail have reached substantial amounts during the past decade. Those claims accrue principally in connection with shipments to destinations in trunk-line and New England territories. "Generally there has been no increase in the damage

[5] The pertinent tariff regulations are summarized in the dissenting opinion in this case by Judge Knous, and the tariff regulations are set forth in full in the Commission's report, *Special Regulations, Eggs*, 284 I. C. C. 377, 403–408.

claims on shell eggs moved by rail to other territories such as the South, the Southwest, and the Pacific coast. The damage claims on shipments to New York, to which the greater part of the evidence in these proceedings was directed, exceed those to any other point in the country." *Special Regulations, Eggs*, 284 I. C. C. 377, 385–386. The average amount of the claims filed on shell eggs to New York City has increased from $30.48 in 1941 to $237.23 in 1949, and the claim per car has increased from $8.82 to $173.81 during the same period (*Id.* at p. 386). In 1947 the payments for claims on shell eggs, in relation to the number of cars, averaged $83.42 for the entire country, but the corresponding figure for New York City was $197.67 (*Id.* at pp. 388–389). And "where the claims on shell eggs were directly related to the shipments which moved that year, they averaged $174.51 at New York, $59.98 at Baltimore, $50.82 at Boston and $49.09 at Philadelphia" (*Id.* at p. 389). The railroads asserted, at the administrative hearing, that the "receivers of eggs at other points are not so critical in their examination of in-bound shipments of eggs as are the receivers in the East, particularly New York, and accept shipments which contain certain damage without filing claims" (*Id.* at p. 392), but the Commission found that the "record does not support this assertion" (*Ibid.*). The total carload loss and damage to shell eggs in 1947 was $2,243,655 (*Id.* at p. 388).

It is the position of the Secretary of Agriculture that the Commission's order of February 4, 1952, approving damage tolerances as to the liability of railroads on shipments of shell eggs and exempting railroads from liability for damage within the designated tolerances, is invalid and should be set aside and enjoined.

THE QUESTIONS ARE SUBSTANTIAL

The primary issue in this case is whether the Commission has approved tariff regulations which limit the railroads' liability for damage to shipments of shell eggs and, therefore, are unlawful and void under § 20 (11) of the Interstate Commerce Act. If the regulations do not limit the liability of the railroads as to damage to shipments of shell eggs, the issue is presented as to whether adequate findings and substantial evidence on the record as a whole supports the order of the Commission.

The issue as to whether common carriers can, by tariff regulations, impose damage tolerances and limit their liability for damage to damage in excess of the stated tolerances is of far-reaching importance in the transportation law of the United States. The investigation in this proceeding has been included, in the Annual Reports of the Commission, as among the "more important" proceedings before the Commission.[3] If the Com-

[3] See *62d, 63d, 64th, and 65th Annual Report of the Interstate Commerce Commission*, pp. 42, 36, 47, and 58, respectively.

mission's action in this case is not set aside, the door is open for the carriers to establish, and for the Commission to approve, similar tolerances as to all commodities and as to all types of freight, and the proscription of § 20 (11) of the Interstate Commerce Act becomes meaningless. To "hold otherwise paves the way for the establishment of damage tolerances for all commodities shipped and permits allowance which should be determined in courts of law."[1]

I

Section 20 (11) of the Interstate Commerce Act requires all common carriers to issue a receipt or bill of lading for all property transported and provides that the carrier "shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier * * * and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier * * * shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common car-

[1] The quotation is from the penultimate paragraph of the dissenting opinion in this case by Judge Knous.

rier * * * notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void" (49 U. S. C. § 20 (11)).

The purpose of this section of the Act is "so accurately stated that discussion could not make it clearer." *Adams Express Co.* v. *Darden*, 265 U. S. 265, 268. Its effect is "to nullify provisions limiting liability contained in public tariffs and in bills-of-lading" (*Id.* at p. 266). Section 20 (11) asserts a "statutory declaration that a contract of exemption from liability for negligence is against public policy and void." *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 511. "The great object of the law governing common carriers was to secure the utmost care in the rendering of a service of the highest importance to the community. A carrier who stipulates not to be bound to the exercise of care and diligence 'seeks to put off the *essential duties* of his employment.'" *New York, N. H. & H. R. Co.* v. *Nothnagle*, 346 U. S. 128, 136; *Santa Fe Railway* v. *Grant Bros.*, 228 U. S. 177, 184–185.

The liability imposed by § 20 (11) of the Act is the liability for every default in a carrier's common law duty, and a tariff provision which

prevents the "recovery of the full actual loss," under the common law rules, is violative of § 20 (11) of the Act. *Chicago &c. Ry. Co.* v. *McCaull-Dinsmore Co.*, 253 U. S. 97, 100. Accord: *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 506–507; *Cincinnati & Tex. Pac. Ry.* v. *Rankin*, 241 U. S. 319, 325–326. The "rule of the common law" does not limit a carrier's liability "to loss and damage due to his own negligence, or that of his servants." *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 509. The common law rule goes beyond this, and the carrier is liable as an insurer for any damage which is not caused by "(a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; (e) or the inherent vice or the nature of the goods." *Bills of Lading*, 52 I. C. C. 671, 679. Carriers are liable as insurers, irrespective of proof of actual negligence, unless they come within one of these well defined exceptions. *C. & O. Ry. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416, 421–423; *Chicago & E. I. R. R. Co.* v. *Collins Co.*, 249 U. S. 186, 192–193; *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 509; *Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 186, 205; *Bank of Kentucky* v. *Adams Ex. Co.*, U. S. 174; 181; *Hall & Long* v. *Railroad Companies*, 13 Wall. 367, 372; *Louisiana Southern Ry. Co.* v. *Anderson, Clayton & Co.*, 191 F. 2d 784, 785–786 (C. A. 5); *Commodity Credit Corporation* v. *Norton*, 167 F. 2d 161, 164 (C. A. 3); *Atchison, T. & S. F. Ry.*

Co. v. *United States,* 94 F. Supp. 677, 679, fn. 2 (Ct. Cl.); *II Kent's Commentaries* (14th ed.), pp. 597–611; *Holmes, The Common Law,* pp. 180–205. It is "sometimes said that the basis of the carrier's liability for loss of goods or for their damage in transit is 'presumed negligence.' * * * But the so-called presumption is not a true presumption, since it cannot be rebutted, and the statement itself is only another way of stating the rule of substantive law that a carrier is liable for a failure to transport safely goods intrusted to its care, unless the loss or damage was due to one of the specified causes." *C. & O. Ry. Co.* v. *Thompson Mfg. Co.,* 270 U. S. 416, 421–422. The majority of the Court in this case misconstrued the phrase "caused by it" in § 20 (11) of the Act, which states that a carrier is liable for the "full actual loss, damage, or injury to * * * property caused by it or by any such common carrier * * *." That phrase does not change the rule that a carrier is liable, under § 20 (11), as an insurer without proof of negligence unless the carrier can bring itself under one of the well-defined exceptions. *Chicago & E. I. R. R. Co.* v. *Collins Co.,* 249 U. S. 186, 191; *Cincinnati & Tex. Pac. Ry.* v. *Rankin,* 241 U. S. 319, 325–326; *Adams Express Co.* v. *Croninger,* 226 U. S. 491, 506–507; *Commodity Credit Corporation* v. *Norton,* 167 F. 2d 161, 164, fn. 4 (C. A. 3). The liability of the carrier to the shipper, irrespective of proof of negligence, was recognized by the

Congress in substituting the phrase "on whose lines" for the proposed phrase "through whose negligence" in § 20 (12) of the Act, which provides that the initial carrier is entitled to recover from the common carrier "on whose line the loss, damage, or injury shall have been sustained * * * (49 U. S. C. § 20 (12)). The conferees explained that the "words 'through whose negligence' are stricken out, and the words 'on whose lines' are substituted, so that the liability of the carrier to the shipper and of the subsequent carrier to the original carrier are made the same."[8]

The exception to the common law rule in the case of damage caused by the "inherent vice or the nature of the goods" has no applicability in this proceeding. This exception relates to loss or damage to property where the carrier is free from negligence and the damage arises solely from the nature and inherent character of the property, *e. g.*, loss or damage resulting from decay, fermentation, evaporation, or natural shrinkage without intervening human agency. *Austin* v. *Seaboard Air Line R. Co.*, 188 F. 2d 239, 240–241 (C. A. 5); *Akerly* v. *Railway Exp. Agency*, 96 N. H. 396, 77 A. 2d 856, 858–862; *Jackson & Perkins Co.* v. *Mushroom Transp. Co.*, 351 Pa. 583; 41 A. 2d 635, 636–639, certiorari denied, 326 U. S. 733; *Watson Bros. Transp. Co.*

[8] H. Rep. No. 4659, 59th Cong., 1st Sess., p. 9; H. Rep. No. 5003, 59th Cong., 1st Sess., p. 7; H. Rep. No. 5076, 59th Cong., 1st Sess., pp. 8–9; Sen. Doc. No. 476, 59th Cong., 1st Sess., p. 4.

v. *Domenico*, 118 Colo. 133, 194 P. 2d 323, 325; *Joseph Miller Co.* v. *Gateway City Transfer Co.*, 247 Wis. 584, 20 N. W. 2d 651, 653–654. Shell eggs do not break themselves. Hence damage to shell eggs is not caused by the "inherent vice or nature" of the eggs as those terms have been established by the common law.

Under the foregoing axiomatic principles, the railroads are liable for 100% of the damage occurring to shell eggs during the transit by rail irrespective of any proof of actual negligence. Any damage occurring to shell eggs during the transportation by rail is damage "caused" by the railroads within the meaning of § 20 (11) of the Interstate Commerce Act. The Commission, however, failed to apply these well defined principles in this proceeding. The Commission approved tariff regulations creating an irrebuttable presumption that a certain percentage of damage occurring during transportation by rail is not "caused" by the railroads. For example, if a shipper obtains a *bona fide* Federal or State egg inspection certificate showing the extent of damage to the eggs at the rail point of origin of the shipment, the railroads will pay, under the regulations, only for damage in excess of that percentage *plus 1 percent*. That limitation of liability to damage in excess of 1 percent is plainly proscribed by § 20 (11) of the Act. Moreover, in practice, the limitation of liability is far more than 1 percent because the inspection

at destination is not as thorough as the Federal or State inspection at the point of origin of the shipment. The Commission found that inspection of eggs by a Federal inspection agency at the destination of a rail shipment may reveal as much as 7.3 percent of damage in addition to the claimed damage ascertained by the customary method of determining the amount of damage at destination. *Special Regulations, Eggs,* 284 I. C. C. 377, 395–396.

The 3 percent and 5 percent tolerances are similarly prohibited by § 20 (11) of the Act. These tolerances would be valid only if, in a particular case, the eggs contained 3 percent or 5 percent damage, respectively, at the point of origin of the rail shipment. But the Commission cannot create any such irrebuttable presumption. A tariff regulation which has been approved by the Commission because it offers a "convenient way" of determining a carrier's liability is violative of § 20 (11) of the Act if, in a particular case, the regulation limits the liability of the carrier to less than the full amount of the damage resulting from the rail shipment. *Chicago &c. Ry. Co.* v. *McCaull-Dinsmore Co.,* 253 U. S. 97, 99–100. Here, as in *New York N. H. & H. R. Co.* v. *Nothnagle,* 346 U. S. 128, 134, the challenged tariffs provide for a "limitation of liability" which is "voided by the Act." In addition, the Commission did not find that eggs packaged at the rail point of origin

generally contain 3 percent damage and that other eggs generally contain 5 percent damage, and therefore, the order by the Commission is also invalid for this reason.

II

The Commission's order in this proceeding is also invalid because it is not supported by substantial evidence on the record as a whole or by adequate findings. Assuming, *arguendo*, the validity of tariff regulations creating a limitation of liability for damage to shell eggs based upon a "normal expectancy of damage," (*Special Regulations; Eggs;* 284 I. C. C. 377, 402), the evidence and the findings do not support the damage tolerances approved in this case.

A basic defect, in this respect, is that the regulations have nation-wide effect. But most of the evidence and the Commission's findings relate to damage resulting from shipments to destinations in trunk-line and New England territories, and to New York City in particular. *Special Regulations, Eggs,* 284 I. C. C. 377, 385–386, 399–400. It is conceded that the damage resulting from such shipments greatly exceeds the damage resulting from shipments to the South, the Southwest, and the Pacific coast (*Id.* at pp. 385–386). Despite these facts, the Commission's report fails to explain or reveal any basis for its approval of uniform nation-wide damage tolerances. Hence here, as in *Automatic Canteen Co.* v. *Federal*

Trade Commission, 346, U. S. 61, 81, the administrative agency has sheltered its conclusions "behind uncritical generalities or such looseness of expression as to make it essentially impossible" for the Court to determine what really lay behind the conclusions which are being reviewed.

In addition, the evidence and the findings do not support the Commission's ultimate conclusion that tolerances of 3 percent for eggs packaged at the rail point of origin and 5 percent for eggs packaged elsewhere are reasonable. There is no evidence and no finding that eggs not packaged at the rail point of origin contain 2 percent more damage than eggs packaged at the rail point of origin. Also there is no evidence or finding that, with respect to eggs packaged at the rail point of origin, the damage *revealed by the inspection at destination*[9] existed prior to the transportation by rail. The Commission found that a "careful inspection" made of eggs loaded into 115 railroad cars in 1948 and 1949 contained an average of "1.4 percent stains and dirties, 1.9 checks, and 0.1 designated as loss," or a total damage of

[9] The commercial inspection at destination is "merely visual" and "no candling lamp is used and the eggs are not clicked." *Special Regulations, Eggs*, 284 I. C. C. 377, 395. If damage in the top layer of a case is not observed the remaining layers are not looked at, and where damage is observed in the top layer, the inspection follows downward only until a sound layer is reached, with no inspection of the layers below. (See transcript of the record in the administrative proceeding, pp. 19–21, 60–61, 98, 251, 258, 440–445, 508–509, 647, 747, 678–683, 812–813):

3.4 percent. *Special Regulations, Eggs*, 284 I. C. C. 377, 393. But the Commission further found that the 1.9 percent checks were "found by candling and clicking, and could not be detected by the kind of inspection performed at New York" (*Id.* at p. 394). The Commission also found that Federal inspection of five shipments at New York City, which had been "previously inspected in the usual commercial manner upon arrival at that point, showed additional damage of 1.72 percent stains, and 2.2 percent checks" *or a total additional damage of 3.92 percent* (*Id.* at p. 396). Similar Federal inspection at New York City on other shipments of shell eggs which had been previously inspected in the usual and commercial manner showed *additional damage ranging from 3.56 to 7.3 percent* (*Id.* at p. 396). Hence the evidence and findings show that after a shipment of eggs has been inspected in the usual manner at destination, there remains undetected an equal or greater measure of damage than could possibly have been included at point of origin. The evidence and the Commission's findings reveal that the 3 percent and 5 percent damage tolerances approved by the Commission in this case relate solely to damage resulting from the shipment by rail. Neither the evidence nor the Commission's findings support the damage tolerances approved by the Commission in this proceeding.

CONCLUSION

For the foregoing reasons the judgment of the District Court should be reversed and the Commission's order of February 4, 1952, should be set aside and enjoined. We believe that the questions presented by this appeal are substantial and are of public importance.

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(S) Neil Brooks,
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Dated: May 5, 1954, Washington, D. C.

JURISDICTION

This proceeding was instituted to enjoin and set aside the order of the Interstate Commerce Commission dated February 4, 1952, approving damage "tolerances" as to shell eggs transported in interstate commerce by railroads, and in accordance with the requirement in 28 U. S. C. 1952 ed. § 2325, the cause was heard by a District Court of three judges. The Court below, on March 10, 1954, filed its opinion denying the applications to set aside, and to enjoin the enforcement of, the Commission's order. The findings of fact, conclusions of law, and decree of the Court were entered on May 7, 1954, and the decree is referred to by the Court as the "Final Decree." An order allowing an appeal from the Court's action of March 10 was signed by Judge Willis W. Ritter on May 7, 1954. However, if the Court did not enter

an order, judgment, or decree on March 10, 1954, the appeal from the Court's action of March 10 is a nullity. Accordingly, a petition for appeal, from the Court's order, judgment, or decree of May 7, 1954, is presented to the District Court herewith, to-wit, June , 1954. The District Court has jurisdiction to allow an appeal from the order, judgment, or decree entered on May 7, 1954, notwithstanding its previous allowance of an appeal in this case. *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 177–178. The jurisdiction of the Supreme Court to review this order and judgment by direct appeal is invoked under 28 U. S. C. 1952 ed. §§ 1253 and 2101 (b). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment of the District Court on direct appeal in this case: *American Trucking Assns.* v. *United States*, 326 U. S. 77; *Alabama G. S. R. Co.* v. *United States*, 340 U. S. 216; *American Trucking Assns.* v. *United States*, 344 U. S. 298.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Civil Action No. C 8-53

UTAH POULTRY & FARMERS COOPERATIVE, A UTAH CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Opinion

Irwin Clawson, Esq., Salt Lake City, Utah, for Plaintiff.

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John P. Staley, Esq., Swift & Company, Chicago 9, Ill., Intervenor.

Walter D. Matson, Esq., Office of the Solicitor, Department of Agriculture, Washington 25, D. C., Intervenor.

Charles S. Sullivan, Esq., Special Assistant to Attorney General, Washington 25, D. C., for Defendant U. S. A.

H. D. Lowry, Esq., Assistant U. S. Attorney, Salt Lake City, Utah, for Defendant U. S. A.

Bryan P. Leverich, Esq., Salt Lake City, Utah, for railroads—Intervenor.

William F. Zearfaus, Esq., 1740 Suburban Sta. Bldg., Philadelphia 4, Pa., Intervening railroads.

Before PICKETT, *United States Circuit Judge;* RITTER and KNOUS, *United States District Judges.*

RITTER, *District Judge.*

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Opinion

RITTER, *District Judge.*

The Complaint seeks to have the Interstate Commerce Commission order of February 4, 1952,[1] approving special regulations of rail carriers covering claims of damage to shell eggs, set aside, annulled and enjoined.

Jurisdiction[2] of this court to review the order, and venue of the parties, are admitted except as to the prayer for a mandatory injunction against the Commission and its eleven members, whose official residence is the District of Columbia and who are not within the venue of this court.

It is admitted that this court has jurisdiction to hear and decide as to the lawfulness of the Commission action and its order. The questions

[1] No. 30030, Special Regulations—Eggs, Vol. 284 I. C. C. page 377.

[2] 28 U. S. C. 1336, 2284, and Chapter 157.

of lawfulness here involved relate only to the Commission orders and not to the tariff filed after the orders became effective, which would be a different proceeding before the Commission and the court.[1]

The plaintiff, Utah Poultry and Farmers Cooperative, is a farmers cooperative marketing association incorporated under the laws of Utah engaged among other things in marketing eggs. Armour and Company, Swift and Company, and the Secretary of Agriculture of the United States have intervened as plaintiffs herein and join in the attack upon the Commission order. The statutory defendant, the United States of America, claims in its answer that the Secretary of the Army represented the United States as a shipper in the proceedings before the Commission, and, in furtherance of its assault upon the Commission order, admitted all of the allegations of the complaint. At the hearing the Justice Department lawyer stated that the United States "confessed error."

The claims of departments of government other than the Interstate Commerce Commission are

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[1] The tariff was filed August 7, 1952, after the entry of the order herein of February 4, 1952, and after its effective date of July 1, 1952. It was filed after the last petition for reconsideration on April 20, 1952, and after final termination of the proceedings before the Commission, and therefore, is not a part of the Commission record herein. If considered by any court it would be by a regularly constituted district court in an action against a carrier, based upon that tariff. Consideration of that tariff in this action would be beyond the jurisdiction of this statutory three judge court which is limited to enforce, enjoin, set aside, annul, or suspend "any order of the Interstate Commerce Commission."

[2] Ch. 1, Title 3, Utah Code Ann. 1953.

entitled to no more weight and consideration than are the same claims in the complaint of the private parties. The Attorney General does not have authority to "confess error" and thereby to dispose of this action.[8]

The Interstate Commerce Commission is vested with the only legal authority to administer the Interstate Commerce Act. It has exclusive authority in this field. Neither the Department of Agriculture, Department of the Army, or the Department of Justice (or all of them) has any authority superior to the Commission to decide for the government the questions raised by this action.[9]

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[8] 28 U. S. C. 2323 provides: "The Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties of their own motion and as of right, and be represented by their counsel, in any action involving the validity of such order or requirement or any part thereof, and the interest of such party." and it further provides: "The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or nonaction of the Attorney General therein."

[9] 49 U. S. C. 12 (1) provides: "And the Commission is authorized and required to execute and enforce the provisions of this chapter; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this chapter and for the punishment of all violations thereof."

The proceeding before the Interstate Commerce Commission was instituted on the Commission's own motion, by its order of July 23, 1948. One hundred and thirty one railroad companies, parties to the tariff schedules, were named respondents therein. And, all of those railroad companies have intervened as parties defendant in the suit in this court, and now defend the Commission order.

Hearings were held by the Commission at Washington, D. C., September 23, 1948; Chicago, Ill., July 26, 27, 1949; Brooklyn, N. Y., December 15, 1949; Washington, D. C., February 8, 1950; Los Angeles, Calif., August 1, 1950, and Chicago, Ill., September 7, 1950, at which counsel for respondent railroads, Department of Agriculture, Defense Department, various producer organizations, and shippers, appeared and submitted testimony of witnesses, and exhibits. The record compiled at these hearings consists of 1,067 pages of testimony and 60 exhibits, many of elaborate statistical data, tables, and charts. Following the hearings briefs were submitted by counsel for respondent railroads, Secretary of Agriculture, Secretary of the Army, National Poultry, Butter and Egg Association, New York Mercantile Exchange, Fairmount Foods Co., Zenith Godley Co., and four packing house companies.

An Examiner's proposed report was filed and served on all parties on April 25, 1951, recommending, for reasons therein stated, that the Commission find that the then 5 percent tolerance on eggs, other than those rehandled and repacked at the rail point of origin, was not shown to be unreasonable or otherwise unlawful, and that the

proposed tolerance of 4 percent on eggs packed at the rail point of origin and 6 percent on those packed at other than rail points of origin, had not been justified, but that tolerances of 3 and 5 percent, respectively, would be reasonable. Exceptions were filed to the examiner's proposed report. Oral arguments by counsel were heard by the Commission on October 26, 1951.

Thereafter the report and orders of February 4, 1952, here involved, were entered by the Commission. Petitions for reopening, reconsideration, and reargument were filed and were denied by the Commission.

The report of February 4, 1952, discontinued the original proceeding and required the suspended schedules to be cancelled without prejudice to the filing of new schedules in conformity with the findings therein, viz., that tolerances of 3 percent on eggs packed at the rail point of origin, and 5 percent on those packed at points other than rail points of origin, would be reasonable. Railroad respondents filed schedules, as permitted by the Commission report, effective on and since August 7, 1952.

The complaint alleges that respondents' schedules, which became effective August 7, 1952, purport to free railroads from all liability for loss of 11 eggs per case on shipments repacked at origin, or 18 per case on shipments not repacked at origin, or 4 per case on government inspected cases, and therefore violate the provisions of Section 20 (11) of the Act.[7] The complaint further alleges that "in approving and accepting the tariff" the Commission failed or refused to en-

[7] 49 U. S. C. 20 (11).

force and observe provisions of the Act. And the complaint alleges that the decision of the Commission is unlawful, on the grounds (a) that findings of fact are unsupported by substantial evidence, and contrary to record evidence, (b) that conclusions of law are not supported by findings of fact, and (c) that conclusions are based upon fact findings wholly irrelevant and immaterial to any issue, and that the decision lends color of authority for legality of tariff provisions in effect, which are unlawful and in violation of Section 20 (11) of the Interstate Commerce Act.

Intervening complaint of the Secretary of Agriculture claims, as the only Commission error, that the carrier damage tolerance rules, approved by the Commission, are attempts to limit comman carrier liability and, as such, are void as a matter of law under Section 20 (11) of the Interstate Commerce Act; that there is no factual basis of record to support the tolerance percent approved, and that, if the damage tolerance rules are valid, approval thereof for nationwide application is unsupported by substantial evidence or adequate findings.

THE PROBLEM BEFORE THE COMMISSION

The Commission was confronted here with complex and difficult questions, of great importance to railroad transportation over the nation. Claims by shippers against carriers for damage to shell eggs had increased greatly. Claims throughout the country increased from about $110,000.00 in 1941 to an all time peak of $2,338,462.00 in 1947. Claim payments in the latter

year were relatively greater for damage to eggs than to any other commodity. The shell egg carload traffic originated in 1947 was only 0.072 percent of all carload traffic, while the claim payments for damage to eggs was 1.91 percent of all claim payments.[8]

The claim payments on eggs in that portion of the United States north of the Ohio and Potomac rivers between the eastern seaboard and the Mississippi River were 2.32 percent in 1941, 7.02 percent in 1943, 16.16 percent in 1945, and 38.41 percent in 1947 of the aggregate railroad revenue on this traffic. In the latter year the total claim payments in this territory amounted to $1,444,453.00.[9]

The following table compiled from Exhibit No. 6 of the record before the Commission sets out the loss and damage per car and per $100 gross revenue on shipments of shell eggs, as compared with other commodities throughout the entire country in 1947:

Commodity	Loss and damage	
	Per car	Per $100 revenue
Shell eggs	$83.72	$21.20
Melons	52.80	15.11
Sewer pipe, et cetera	19.57	13.16
Crockery and earthenware	29.20	9.10
Furniture (new)	10.23	4.38
Grain	3.45	1.42
Meats, fresh and cured	3.41	1.13
Plumbers' goods	14.06	4.35

A study made by the railroads and introduced in evidence by the Commission shows that claims

[8] 284 I. C. C. at page 399.

[9] Id.

were filed on 58.6 percent of all carloads of shell eggs delivered in New York, Philadelphia, Baltimore and Boston during 1947. The study also shows that the percentage that such claims were of the total revenue received on the shell eggs traffic to those cities during the year mentioned is as follows:

New York	50.5
Philadelphia	11.7
Baltimore	15.8
Boston	12.2
Total	41.7

At the conclusion of the first hearing at Chicago, after listening to the testimony concerning the extraordinary damage claim payments on shipments of shell eggs, Interstate Commerce Commissioner Mitchell, who was hearing the case, said at page 364 of the record:

> We will proceed to New York. We have but one desire in mind; of course, and that is to see if we can't remedy a condition which seems to us should be remedied. That is our sole purpose in this investigation, to help the shippers and to see that the railroads receive fair compensation for hauling eggs.

Where such an immense volume of traffic, running into thousands of cars and millions of cases of eggs (284 I. C. C. 377, 386), and such tremendous freight charges and damage claim payments, running into millions of dollars (284 I. C. C. 377, 387), are involved, the economic stability of carriers and the maintenance of an adequate national system of railroads, were substantially affected.

It is the exclusive responsibility of the Commission, under the National Transportation Policy [10] to foster sound economic conditions in transportation and among carriers "to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of commerce of the United States, of the Postal Service, and of the national defense."

Many interests are here concerned including farmers, consumers, the national defense. They and all other elements in our economy are deeply interested in the maintenance of an adequate national transportation system.

Anything endangering the efficient operation of railroads inevitably will be injurious to us all.

THE ALTERNATIVE REMEDIES ARE UNPROMISING

The Commission sought a remedy. The problem of claims against railroads for damage to egg shipments had been before the railroads and the Commission for many years and never satisfactorily solved. It is extremely difficult of solution. It constitutes a part of the whole problem of the rate structure, which courts many times have held requires the experience and judgment of the Commission.

The Commission could not expect the railroads to continue to take these losses. That was uneconomic to the point of being injurious to the national railroad transportation system and to the public interest. That, also, in effect, was a means of obtaining involuntary rebates contrary

[10] 49 U. S. C. preceding secs. 1, 301, 901, and 1001.

to one of the most fundamental underlying principles of the Interstate Commerce Act, i. e., to insure uniformity and to avoid unjust discrimination.[11]

The Supreme Court of the United States, in *Lowden* v. *Simonds etc. Grain Co.*,[12] said:

> Under par. 6 of the Interstate Commerce Act the carrier cannot deviate from the rate specified in the tariff for any service in connection with the transportation of property.* That section forbids the carrier from giving a voluntary rebate in any shape or form. This court has had occasion recently to sustain action of the Commission aimed at carriers' practices resulting in collection of less than the tariff rate.** It is equally important to aid the efforts of a carrier in collecting published charges in full.*** Involuntary rebates from tariff rates should be viewed with the same disapproval as voluntary rebates.

*Act of Feb. 4, 1887, 24 Stat. 379, 384, as amended, 49 U. S. C. par. 6 (7).

**Baltimore & Ohio R. Co. v. United States, 305 U. S. 507.

***Cf. Pittsburgh, C., C & St. L. Ry. Co. v. Fink, 250 U. S. 577; New York Central & Hudson River R. Co. v. York & Whitney Co., 256 U. S. 406.

Rate increases were not the remedy. That would have imposed a greater cost upon shippers throughout the nation than the present regulation. That would have been more unjust for it would penalize some shippers for the benefit of others. That would not have benefited the shippers of eggs. That would tend to cause the railroads to lose all of the business.

[11] New Haven R. R. v. I. C. C., 200 U. S. 361, at page 391.

[12] 306 U. S. 516, at top of page 521 (1939).

The limitation of the regulation to the four eastern cities where most of the damage claims to eggs arise, we are informed was tried and failed.

It is not unjust to apply the regulation nationwide. A shipper whose eggs suffer no damage is not hurt. The tolerance applies only if there is damage. If throughout the nation relatively small claims of damage were made by some shippers it would follow that there would be comparatively small or insignificant reductions under the regulation. And, it is a reasonable assumption from the Commission's exhaustive factual studies that generally some amount of damage was in the crates at the time they were delivered to the carrier.

One suggestion is that Congress enact remedial legislation. This would seem to be undesirable and impracticable for a number of reasons. There are important considerations which seem to require the retention of the provisions of Section 20 (11) in the Act. No one has suggested that it be repealed in its entirety. The provision has proved to be a beneficent one. Congress has developed a policy for solving these problems by reliance upon the expertness and experience of the Commission rather than upon the saving clauses enacted by itself to take care of the cases as they arise. History has shown us that it is better to develop a rule by the common law method of deciding the cases as they arise and thus carving the principle out by the light of experience.[13] Particularly is this true where as

[13] The question was put to Lord Nottingham, "where will you stop if you do not stop here?" And his answer was, "I

here the matter is one calling for the judgment of an administrative body of experts to pass upon issues of fact. If it is bad policy for the Commission to limit carrier liability *a fortiori* it is bad policy for the legislature to do so. The courts will draw the line when the suggested horrible, atrocious or monstrous situations shall arise from any claimed abuse of administrative discretion.

THE EVIDENCE

What then, in such a situation, is the Interstate Commerce Commission to do?

It instituted an investigation with a view to making findings and prescribing reasonable rules, regulations, and practices relative to the transportation of shell eggs.

That investigation developed that there is a certain minimum amount of damage in every crate of eggs when it is delivered to the carrier. That damage consists of checked, cracked and broken eggs. That damage also consists of unavoidable further loss arising from those checked, cracked and broken eggs, and from inherent defects in the eggs at the time of delivery to the carrier.

The brief filed by the intervening railroads summarizes the evidence. It is noteworthy that much of it came from witnesses from the United States Department of Agriculture, an intervening plaintiff herein. The brief sets out the evidence as follows:

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will tell you where I will stop; I will stop wherever any visible inconvenience doth appear." The Duke of Norfolk's Case, Charles Howard v. Duke of Norfolk, Court of Chancery, 1682. 3 Ch. Cas. 1, 26.

"The evidence before the Commission proved conclusively that it is humanly impossible to handle shell eggs without some breakage (138, 257, 258, 263)." Crystal clear statements to this effect came from the witnesses from the United States Department of Agriculture, an intervening plaintiff here.

Mr. Henry G. F. Hamann, Chief of the Dairy and Poultry Inspection and Grading Division, Production and Marketing Administration, United States Department of Agriculture, was placed upon the stand by Mr. Walter Matson, the attorney for the United States Department of Agriculture, and, at pages 256 and 257 of the record, testified as follows:

> Commr. MITCHELL. Mr. Hamann, I notice in your Exhibit No. 20, as I read this, your department provides for tolerance permitted in these grade AA eggs of 7.5, is that right?
>
> The WITNESS. That is correct, sir.
>
> Commr. MITCHELL. That includes checks?
>
> The WITNESS. Yes, sir, that includes all tolerances, all tolerance for edible eggs.
>
> Commr. MITCHELL. And on grade A, you permit 11.7 percent?
>
> The WITNESS. Yes, sir.
>
> Commr. MITCHELL. So you do recognize that there must be a tolerance in the grading of eggs?
>
> The WITNESS. There is a tolerance in the grading of eggs, sir, because it is not humanly possible to remove from any lot of eggs in the candling or grading process of defective eggs.

The figures in parentheses refer to pages of the transcript of testimony taken before the Interstate Commerce Commission.

Commr. MITCHELL. Does that include also cracked eggs?

The WITNESS. Yes, sir.

Commr. MITCHELL. You say, then, it isn't humanly possible to eliminate all the cracked eggs that you would find in cases?

The WITNESS. That is correct.

Commr. MITCHELL. All right.

The WITNESS. The tolerances are set up primarily for the purpose of making allowance for human error.

"Further no pages 257–268 the following colloquy took place between Mr. Hamann and his counsel:

By Mr. Matson:

Q. You say that it is impossible to eliminate every checked and cracked egg from a case in the process of grading and inspection of eggs?

A. Yes, sir.

"And still further at page 263 of the transcript Mr. Hamann testified as follows:

Q. You pointed out it was humanly impossible, or at least impractical, to pack a perfect car. You have never seen a perfect car, have you?

A. No, sir, I haven't.

Q. Then there is a normal expectancy of shell damage in every car that is loaded, is there not?

A. Yes, sir.

"Another witness placed upon the stand by the attorney for the United States Department of Agriculture was Mr. Hermon I. Miller, Chief of Research Division of the Poultry Branch, Production & Marketing Administration, United States Department of Agriculture (283). He

made studies with respect to damage to shell eggs at the request of the Interstate Commerce Commission. (295). Mr. Miller stated that when eggs from the farm are delivered to the packer 5 percent of them are in a checked condition (shell cracked but membrane unbroken) upon arrival at the packing plant. Of this 4 percent existed at the time the eggs left the farm, and 1 percent more became checked while traveling to the packer's plant (283, 289, 297, 446, 447). In addition to the 5 percent of the eggs which were in a checked condition, 12 percent more also showed shell damage consisting of stains and dirties (296, 297). The witness stated that the eggs are reworked at the packer's plant and that when they left the shipping point the eggs showed 1.9 percent checks and 1.4 percent stains and dirties, a total of 3.3 percent (297). This testimony was given by Mr. Miller at the hearing in Chicago on July 27, 1949. After further tests he corroborated it at a subsequent hearing which was held at Brooklyn, N. Y., on December 15, 1949, his testimony, which appears at pages 444 and 445 of the record with respect to this point, being as follows:

> Q. At the Chicago hearing you presented exhibits Nos. 22 and 23 and you indicated at page 294 of the record that, "We have some other material for 1948 that we haven't got summarized yet that we will throw into this when we get it completed."
>
> Have you made some subsequent checks since the Chicago hearing?
>
> A. Yes, Mr. Matson. That was with regard to the amount or the type of eggs that was going into cases in mid-western shipping points and the type coming out at destination, and we have examined the

complete records and our testimony will stand as presented in Chicago."

Q. As I recall that testimony, at pages 269 to 298 of the transcript, you found that there were packed into the cases at origins 1.9 percent checks?

A. That is right.

Q. And 1.4 percent stains and dirties. Do your subsequent tests that you have run on this material and other material bear you out in those figures?

A. They do.

"The study in which this witness of the Department of Agriculture expressed confidence was described by him at page 286 of the record as follows:

> The third source of material consists of data on 115 cars secured by our own staff members in 1948 and 1949. In these records we made careful inspections of eggs at points of origin as they were to be loaded into railway cars, marked the sample cases inspected at this point, and re-inspected these same cases and the same eggs at destination. This exhibit should typify the average quality and condition of eggs that are packed in railroad cars for shipment from midwestern points.

"The result of the study described in the above quotation is set forth at page 3 of Exhibit No. 22, and shows the shell damage prior to rail shipment as follows:

Stains and dirties	1.4
Checks	1.9
Loss	0.1
Total	3.4

"The reason for the confidence which the Department of Agriculture representative had in the above figures is stated by him at pages 287 and 288 of the record, as follows:

> Now, I have more faith in those figures than I would have otherwise because if you look in the middle page between these two tables you find the report on the 737 cars selected at random from the inspection and grading reports, and I think you will agree that to a considerable extent the total or average column for origin and grading reported on this page agrees with the origin grading for the 115 cars. That gives me confidence to a certain extent that the figures on the 115 cars are rather representative.

"The study with respect to the 737 cars, to which the Department of Agriculture witness referred, covers eggs from all parts of the country (296). It appears at page 2 of Exhibit No. 22 and contains the following breakdown:

Stains and dirties	1.8
Checks	1.9
Loss	0.2
Total	3.9

"Mr. Hamann, the aforementioned Chief of the Dairy and Poultry Inspection and Grading Division, Production and Marketing Administration, of the United States Department of Agriculture, stated that approximately 10 percent of the total volume of commercial eggs produced throughout the nation are graded by the Department (238, 240), and that the certificates issued by the Department at the time of the grading

show that there is a normal expectancy of shell damage at origin (263).

"An examination was made by the railroads of 1,002 origin inspection certificates of the Department of Agriculture which revealed that 18,437 cases of eggs were included in the 1,002 cars examined at shipping point with the following results:

3.04 percent of the natural eggs (eggs before oil dipping) were found to be checked and/or stained.

3.22 percent of the processed eggs were found to be checked and/or stained (105).

"The railroads' study of the Department of Agriculture certificates which developed that 3.22 percent of eggs shipped have shell damage at origin is a remarkable substantiation of the study made by the Department of Agriculture in response to the request by the Commission.

"The railroads also submitted the results of studies of inspections made by them at rail shipping points (105). These studies showed that there is shell damage of one kind or other in every car regardless of whether or not the eggs had just been rehandled and repacked or had been hauled over the highways various distances before loading into the rail freight car. The result of this research is summed up as follows:

From—	Year	Number of cars	Percentage damage
Indiana	1947	74	2.2
Indiana	1948	30	3.2
Indiana, 12/4/48	To 2/19/49	22	2.8
Iowa	1947		2.53
Iowa	1948		2.46
Minnesota	1947		1.81
Minnesota	1948		3.84

"The results of another railroad study made at shipping point were given in Exhibit No. 15 and at page 196 of the record, as follows:

> We adopted a program of taking 15 cases and inspecting 100 eggs to determine how many eggs were checked, broken, stained and dirty. The statement shows that we made inspection on 60 cars and we developed through that process that we used 2,256 checks, 98 broken, or a percentage of 2.61.

"Shipping point studies made by railroad representatives indicate that shell damage before rail transportation is chargeable to the following factors in the order of their importance, not one of which is attributable to the railroads: *First*, the inherently fragile nature of eggs. It is generally conceded by all parties acquainted with the commercial handling of eggs that a certain amount of shell damage is inescapable. This normal expectancy of damage starts at the nest and, depending upon the strength of the individual shell, continues progressively until the egg is used by the consumer. *Second*, the handling of the eggs in the candling and repacking operations. Checks (cracked eggs with unbroken membrane) develop in any oil dip processing of the eggs, and eggs are broken when the egg case is lidded. *Third*, the handling by the shippers of the packed egg cases to and into freight cars. Very often there is no supervision of the handling of the packed cases in the car. Sometimes unskilled or itinerant labor, with apparently no previous training, is used by the shippers to load the cars, and with no supervision on the part of the owner

of the eggs in promoting careful and proper loading (106, 107).

"The condition of a damaged egg never gets better, but always get worse with handling. Not only is there a worsening during transportation of the condition of the eggs which were in a damaged condition at the time they were received by the railroads, but those eggs also cause damage to others which had been sound (197). At page 3 of the Department of Agriculture's Exhibit No. 22 is set forth the results of studies made by it with respect to 115 carloads of eggs delivered on all parts of the east coast, the Gulfport cities, and the west coast (287, 450). Included among them were 12 cars which went to New York City (450). One study was of the condition of the 115 carloads at point of origin and the other study was of the condition of the same 115 carloads at destination after they had received rail transportation. The different between the number of stains and dirties and checks at destination, and the number of stains and dirties and checks at origin, was found to be 1.5 percent. The witness said that this figure was supported by 8,000 additional cars, using the following language at page 449:

> A. Fifteen cases to the car, a hundred eggs in each case, 115 cars supported by approximately 8,000 additional cars.
>
> Q. These are all rail tests?
>
> A. All rail tests."

EXPERIENCE WITH TOLERANCE RULES

Tolerance rules in connection with damage claims arising out of the transportation of shell

eggs have been in effect for 37 years and with the approval of the Interstate Commerce Commission for 34 years.

Settled administrative construction, long standing approval by the Interstate Commerce Commission of tolerance rules, and compliance in practice, in connection with damage claims incidental to the transportation of shell eggs are entitled to great weight.

In *U. S.* v. *Chicago North Shore R. Co.*,[15] the Supreme Court of the United States said:

> It would be difficult indeed to conceive a clearer case of uniform administrative construction of par. 20a as applied to this company. Conceding that the proper classification of the railway is not free from difficulty, all doubt is removed by the application of the rule that settled administrative construction is entitled to great weight and should not be overturned except for cogent reasons. *New York, N. H. & H. R. Co.* v. *Interstate Commerce Commn.*, 200 U. S. 361, 401; *Logan* v. *Davis*, 233 U. S. 613, 627; *Brewster* v. *Gage*, 280 U. S. 327, 336; *Fawcus Machine Co.* v. *United States*, 282 U. S. 375, 378; *Interstate Commerce Commn.* v. *New York, N. H. & H. R. Co.*, 287 U. S. 178.
>
> The primary responsibility rested upon the Commission to determine whether under the circumstances the railroad was required to procure leave under par. 20a for the issuance of securities. Evidently entertaining serious doubts on this question it has for more than a decade resolved them in favor of the carrier, and the company and

[15] *U. S.* v. *Chicago North Shore R. Co.*, 288 U. S. 1, last par. page 13 and par. top of page 14.

its officers have acted in reliance on the administrative tribunal's construction of the statute. At this late day the courts ought not to uphold an application of the law contradictory of this settled administrative interpretation.

The Commission's report in *National Poultry, Butter & Egg Assn.* v. *N. Y. C. R. R. Co.*, 52 I. C. C. 47, discloses at pages 48 and 49 that tariff tolerance rules in connection with damage claims on shell eggs had been in effect in the east as early as February, 1916, or more than 37 years ago. The Commission's approval of a tolerance rule, as it is set forth in the case just cited, dates from January 21, 1919, or over 34 years ago.

Prior to that the Commission approved tolerance rules in connection with grain in *Crouch Grain Co.* v. *A. T. & S. F. Ry. Co.*, 36 I. C. C. 265, decided October 5, 1915, and 41 I. C. C. 717, decided November 10, 1916. In the last mentioned case the Commission approved the lawfulness of a tariff rule which provided that in the adjustment of claims for loss allowances for natural shrinkage to be deducted from the claims there should be 1/8 of 1 percent on wheat, flax seed, rye, oats and barley, and 1/4 of 1 percent on corn.

In the foregoing case the Commission held that limitation of liability was "not against losses *caused by the carrier or its connections*, but rather against liability for losses *due to the inherent nature of the commodities themselves* and attributable to no human agency."

Tolerance regulations of carriers and the principles, with reference to the inherent nature of commodities, were recognized by the Commission and courts long before the egg proceedings

here involved. In Weight Tolerance Rule, 192 I. C. C. 71, 77, the Commission approved the tariff regulation providing weight differential on coal, due to moisture evaporation or precipitation, inherent in that commodity. In *Fuel Sales Corp. v. Delaware, L. & W. R. R. Co.*, 225 I. C. C. 288, 291, the Commission granted reparations based upon loss in weight of washed anthracite coal between point of origin and destination, covering a greater percent loss than allowed under the carrier tariff rule, both the Commission decision and carrier rule being based upon moisture evaporation inherent in the commodity.

Tolerances such as here serve a useful, practical and lawful purpose. They are arrangements of the kind which Mr. Justice Brandeis had in mind when he said in *Luckenbach v. McCahan*:[16]

> It is credible to the ingenuity of business men that an arrangement should have been devised which is consonant both with the needs of commerce and the demands of justice.

Furthermore, the United States Department of Agriculture and the trade have provided tolerances for the normal expectancy of shell damage to eggs in grading. And the Army of the United States when making its inspection of shell eggs grants allowances for shell damage.

INTERPRETATION OF SECTION 20 (11)

The contemporary construction of an act is entitled to great weight in its interpretation. The provision in question, viz., Section 20 (11) was

[16] 248 U. S. 139, 149.

interpreted in a proceeding by the Commission in 1915. Upon the urging of interested parties a hearing was held and the Commission interpreted the newly enacted Cummins Amendment.[17]

Railroads, Chambers of Commerce, merchants and traffic associations, and shippers participated in the proceeding. After carefully considering numerous suggested proposals and interpretations, the report stated its construction of the Amendment, which is deemed pertinent to questions here raised, and is quoted. At page 691–692, it is stated:

> "It seems clear that these provisions are, in common with the other matters governed by the amendment, confined to instances of loss, damage, or injury caused by the carriers. * * * In the interest of thorough understandings and to avoid controversies it is very desirable that these rules be uniform for all the carriers of the country." At page 695 it is stated: "There is, however, no inhibition as to the limitation of the liability of a carrier for losses not caused by it or a succeeding carrier to which the property may be delivered. * * *" From this it follows that under the amendment a contract or a tariff may lawfully limit to a reasonable maximum the liability of a carrier for losses which it does not cause. * * * (P. 596.)
>
> The liability provided by the rates so established by the Commission is applicable no less to instances of loss or damage chargeable to the negligence of the carrier than to those occasioned by causes beyond the carrier's control.

[17] In re The Cummins Amendment, 33 I. C. C. 682 (1915).

The United States Supreme Court early interpreted the Carmack Amendment as follows: [18]

> What is the liability imposed upon the carrier? It is a liability to any holder of the bill of lading which the primary carrier is required to issue "for any loss, damage or injury to such property caused by it," or by any connecting carrier to whom the goods are delivered. The suggestion that an absolute liability exists for every loss, damage or injury, from any and every cause, would be to make such a carrier an absolute insurer and liable for unavoidable loss or damage though due to uncontrollable force. That this was the intent of Congress is not conceivable. To give such emphasis to the words, "any loss or damage," would be to ignore the qualifying words, "caused by it." The liability thus imposed is limited to "any loss, injury or damage caused by it or a succeeding carrier to whom the property may be delivered," and plainly implies a liability for some default in its common law duty as a common carrier.
>
> *The Commission action is within the Congressional grant of authority. And, it does not limit carrier liability in violation of Section 20 (11).*

Power has been granted the Interstate Commerce Commission by Congress in the broadest possible terms to decide the matters in this transportation controversy.

The Act [19] requires railroads to publish tariff

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[18] *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 503, 506-507 (1913).

[19] 49 U. S. C. Section 6.

schedules, including "any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered."

The Act[20] also authorizes the Commission after hearing and determination that any "regulation," among other provisions, "is or will be unjust or unreasonable * * * or otherwise in violation of any provisions of this chapter," to "determine and prescribe * * * what * * * regulation * * * will be just, fair and reasonable, to be thereafter followed."

The method of removing from a damage claim filed on shell eggs that portion of the damage for which the railroads are not responsible is a practice over which the Interstate Commerce Commission is given jurisdiction in broad language.

The restraint imposed upon the carriers and the Commission by Section 20 (11) of the Act is not broad, but is in terms narrowly limited. That section refers to carrier liability for any loss, damage or injury, "caused by it." Neither the Act nor the common law makes the carrier liable for damage which it does not cause. A statute which purported to do so would present serious constitutional question. The liability which the carriers and Commission are forbidden by Section 20 (11) to limit is a liability for damage caused by the carrier.

Hence, on the one hand power is granted the carriers and Commission in the broadest terms, while on the other hand the restraint upon their

[20] Section 15, see also Section 13 (2).

power is couched in carefully restricted language.

To deny the Commission authority to do what it here has done is to drop out of Section 20 (11) of the Act, the restrictive language "caused by it" and to limit the broad grant of powers which the United States Supreme Court consistently has recognized that the Commission possesses. To strike the tolerance regulation down requires us to go a long way. Surely, it is hardly to be said consistent with well accepted principles of statutory construction.

Courts have harmonized provisions of the Act to regulate commerce in order to give full effect to the purpose of the statute to prevent involuntary rebates, discriminations and other practices which the act was intended to remedy. In *Arkansas Fertilizer Co.* v. *U. S.*,[21] the court says:

> In construing remedial statutes, especially those of a generic character, courts have not hesitated to restrict and modify the ordinary meaning of words and phrases, and even of entire paragraphs, in order to harmonize conflicting or inconsistent provisions and so enable all of them to contribute in proper degree to the object sought to be accomplished. Instances of this kind are too familiar to require citation. Indeed, the Supreme Court, in the *Abilene Case*, 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, declared that a right of action as old as the common law had been taken away by the act to regulate commerce, since otherwise full effect could not be given to the purpose of that statute to prevent discriminations. Bearing in mind how rarely suits were brought to recover damages for excessive railroad charges, and

[21] 193 Fed. 667, particularly the last par. on page 670.

> How easily collusive delay in the payment of freight bills could be utilized, as the Commission points out, to give preferences which are actual rebates, it seems well within precedent to reject petitioner's contention and to uphold a construction under which, as Commissioner Lane observes:
>
> "This act becomes workable and enforceable from the standpoint of shipper, carrier, and the Commission itself."

The Interstate Commerce Commission does not base its approval of the tolerance rule, in whole or in part, upon any kind of limitation of carrier liability, but on the contrary, bases that approval upon a finding of fact that the regulations "are directed against losses due to the inherent nature of shell eggs *rather than against losses caused by the carrier*. These regulations merely establish a means to determine the amount of damage existing at the time the shipment is received by the carrier, and the amount of damage resulting * * * during transportation solely because of the inherent nature of the shipment."[2]

No one contends that carrier liability may be reduced, lessened or limited contrary to the provisions of Section 20 (11) of the Act.

Losses caused deliberately, wilfully, maliciously and intentionally by the carriers or their agents, or due to their negligence, or to accidents in transit, such as broken cases, damage to entire carload, and the breakage of large numbers of eggs in a shipment, are not limited by these regulations. They purport only to exempt the carrier from losses the carrier does not cause. That is the whole basis of the report.

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[2] 284 I. C. C. 377, 383.

The question before us is whether these carrier regulations, which seek to avoid liability for loss *not caused by them*, are reasonable. To determine the reasonableness of such a regulation requires the experience and knowledge of transportation conditions possessed by the Commission.

This is the kind of a question Congress intended the Commission to have the authority to determine.

The Interstate Commerce Commission and the carriers contend that there is a certain minimum amount of damage in every crate of eggs when it is delivered to the carrier. The Commission has made its findings of fact as to what the minimum damage is. The evidence supports those findings. Indeed, the findings are corroborated by United States Department of Agriculture and War Department practices in grading shell eggs. And, much of the evidence comes from Department of Agriculture witnesses themselves, examined by their own attorney.

The Commission problem herein was to decide the extremely complex questions posed by the rail regulations, seeking to avoid damage liability relating to shell eggs, which was inherent with that fragile commodity and that part of the damage which is not due to carrier action or negligence. As shown by the report consideration of evidence,[2] eggs inherently have certain defects which are not revealed by customary inspections at origin points, and sometimes not by the most careful candling process. Despite the efforts of the past to improve methods of packing and in-

[2] 284 I. C. C. 377, 384, 385.

spection it is recognized by experts,[24] including the Department of Agriculture, that some small percent of undisclosed damage exists in all cases of eggs, increasing in percentage as they move from farms to packing plant, to points of loading on cars, in the loading process, in transit, and at point of unloading. It would appear most difficult to determine with accuracy the portions of such damage which exist at the time of delivery to carriers, occurs during transit, or results from shipper inspection at destination. The report,[25] found that the slightest movement in transportation may cause additional damage to such eggs, which cannot be imputed to carrier negligence, but rather to the inherent nature of the commodity.

The task of regulating interstate commerce has been vested in the Commission. Congress has manifested a general legislative purpose to establish a system of administrative control. And that system has been progressively expanded. So that the principle now is well recognized that "the Commission is the tribunal to which the tasks of regulation have been expressly committed, and that the courts will restrict their power of censorship to the condemnation of abuse of authority."[26]

[24] Id., 391, 392, 394, 395.

[25] Id., 402.

[26] Sharfman, The Interstate Commerce Commission, Vol. II, p. 389, published by the Commonwealth Fund Legal Research Committee; Chief Justice White in *Interstate Commerce Commission* v. *Ill. Cent. R. R.*, 215 U. S. 452 (1910) at p. 470; Justice Lamar in *Interstate Commerce Commission* v. *Union Pacific R. R.*, 222 U. S. 541 (1912) at p. 547–548.

The crux of this lawsuit is the Commission holding [27] that the regulations as to tolerance are not limitations of carrier liability, but are tariff rules designed to relieve carriers from paying damage claims which are not attributable to their negligence or other fault.

This is a question of fact relating to the application of the provisions of the Act, which legally can be decided only by the Commission and when so decided with substantial support of record evidence will not be disturbed by the courts.[28]

In *I. C. C.* v. *Union Pacific R. R.* (supra), at pp. 547–548, the court made its classic statement of principle as follows:

> In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. "The findings of the Commission are made by the law *prima facie* true, and this court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience." *Ill. Cent.* v. *I. C. C.*, 206 U. S. 441. Its conclusion, of course, is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be

[27] 284 I. C. C. 377, at page 401.

[28] *I. C. C.* v. *Union Pacific R. R.*, 222 U. S. 541, 547–548; *Miss. Valley Barge Line Co.* v. *U. S., et al.*, 292 U. S. 282, 286–287; *Board of Trade of Kansas City, et al.*, v. *U. S., et al.*, 314 U. S. 534, 546–548. See also, *National Labor Relations Board* v. *Hearst*, 322 U. S. 111, top of page 131.

supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.

An analogy to the instant case, and a close one, is found in controversies as to whether rates and other practices are unreasonable or discriminatory. Sharfman, supra, at page 424, summarizes the results of the case:

> Recognizing that the task of regulation have been vested in the Commission and that judicial review is restricted, essentially to the issue of legal power, the courts have declined to assume jurisdiction over all determinations involving the exercise of administrative discretion. Such determinations have been treated as "questions of fact" to be freely and finally established by the Commission in its application of the general standards laid down by statute. The problem has arisen most frequently in connection with controversies as to whether rates and practices are unreasonable or unjustly discriminatory. The Commission's findings in such proceedings embrace not only the primary objective, or evidentiary facts disclosed by the record, but the conclusions drawn therefrom as ultimate facts. In both processes administrative judgments are reached. Conflicting or inconclusive testimony may necessitate the resolution of doubt as to the evidentiary facts; and even if there were no dispute as to the evidentiary facts, the conclusions drawn therefrom as ultimate facts—that the rates or practices at issue are unreasonable or unjustly discriminatory—necessarily constitute an expression of judgment. The courts seldom distinguish between evidenti-

> ary facts and ultimate facts, except that the latter category is sometimes referred to as involving, not merely "questions of fact," but "mixed questions of fact and law"; both groups of findings are held to be free from judicial interference. *In these circumstances, and assuming the absence of errors of law, judicial review is confined to a determination as to whether there is evidence to support the administrative conclusions, regardless of whether the courts would themselves reach the same conclusions.* In other words, the element of judgment or discretion which inheres in the administrative method is allowed free play, and determinations which reflect such judgment or discretion are clothed with finality. [Emphasis supplied.]

Many subsequent court decisions have continued the basic standard in *I. C. C. v. Union Pacific R. R., supra,* which the Commission has followed in its consideration and determination of rail rate matters. With practical unanimity the decisions have held that Commission determinations, with respect to complicated rate matters, are in part the exercise of sound discretion and experienced judgment, which courts will not disturb where orders are supported by substantial evidence. As stated in *Virginian Ry. Co. v. United States,* 272 U. S. 658, 665–666 (1926):

> The finding of reasonableness, like that of undue prejudice, is a determination of a fact by a tribunal "informed by experience." *Illinois Central R. R. Co.,* v. *Interstate Commerce Commission,* 206 U. S. 441, 454. This court has no concern with the correctness of the Commission's reasoning, with the soundness of its conclusions, or

with the alleged inconsistency with findings made in other proceedings before it.

In *Mississippi Valley Barge Line Co.* v. *United States et al.*, 292 U. S. 282, 286, 287, the Court held that "The structure of a rate schedule calls in peculiar measure for the use of that enlightened judgment which the Commission by training and experience is qualified to form" and added:

> The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body. In this instance the care and patience with which the Commission fulfilled its appointed task are plain, even to the casual reader, upon the face of its report.

In a later case, *Board of Trade of Kansas City et al.* v. *United States et al.*, 314 U. S. 534, 546–548, the Court stated, in connection with the Commission authority and judicial review of Commission action in respect to rail-rate cases, that—

> The process of rate making is essentially empiric. The stuff of the process is fluid and changing—the resultant of factors that must be valued as well as weighed. Congress has therefore delegated the enforcement of transportation policy to a permanent expert body and has charged it with the duty of being responsive to the dynamic character of transportation problems. Cf. *Railroad Commission* v. *Rowan & Nichols Oil Co.*, 310 U. S. 573, 581–582.
>
> * * * * *
>
> We certainly have neither technical competence nor legal authority to pronounce upon the wisdom of the course taken by the Commission. It is not for us to tinker

with so sensitive an organism as the grain rate structure, only a minor phase of which is caught in the record before us. If we were to grant the relief sought by the appellants, we would be restoring evils which the exclusive ratebreak adjustment was designed to remove—evils which, for all we know, would be far more serious than those complained of by the appellants.

In a still later case, *New York et al. v. United States et al.*, 331 U. S. 284, 328, the Court quoted with approval from the Commission report in *Class Rate Investigation*, 1939, 262 I. C. C. 447, 693, a statement of considerations found necessary and applied to decisions as to rate reasonableness, such as herein involved, as follows:

> Discretion and flexibility of judgment within reasonable limits have always attended the use of costs in making of rates. *Costs alone do not determine the maximum limits of rates. Neither do they control the contours of rate scales or fix the relations between rates or between rate scales. Other factors along with costs must be considered and given due weight in these aspects of rate making.* [Emphasis supplied.]

That quotation in part accounts for the Court opinion statement on the same page, as follows:

> We start, of course, from the premise that on a subject of transportation economies, such as this one, the Commission's judgment is entitled to great weight. *The appraisal of cost figures is itself a task for experts, since these costs involve many estimates and assumptions and, unlike a problem in calculus, cannot be proved right or wrong. They are, indeed, only guides to*

judgment. Their weight and significance require expert appraisal. [Emphasis supplied.][7]

CONCLUSION

I

The Commission's power to act in the case at bar depends upon the existence of fact. That fact is whether damage with the limit of the 3 percent and 5 percent tolerances is caused by the carriers.

The Commission has made a finding, which is supported by the evidence, that such damage is not caused by the carriers.

Under the decisions that finding may not be disturbed if it is supported by substantial evidence.

The Commission's power to act in many other cases depends upon the existence of fact. The Supreme Court, in *Interstate Commerce Commission* v. *Union Pacific RR, supra,* said:

> * * * it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. *But questions of fact may be involved in the determination of questions of law,* so that an order, regular on its face may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of

[7] See also *Rochester Telephone Co.* v. *U. S.*, 307 U. S. 125; *Western Paper Makers Chemical Co.* v. *U. S.*, 271 U. S. 268; *U. S.* v. *Wabash R. Co.*, 321 U. S. 403; *U. S.* v. *U. S. Smelting Co.*, 339 U. S. 186.

law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power.

Questions of fact are involved in the determination of other questions of law. (1) Whether a rate is so low as to be confiscatory, and therefore in violation of the Constitution; and (2) whether rates and practices are unreasonable or discriminatory, and therefore in violation of the statute, are familiar examples.

In these instances, also, Commission findings of fact are binding upon the courts if supported by substantial evidence.

Fundamentally, there is no difference between the finality of the Commission's finding of the fact upon which the rule of law depends in these cases and the finality of the Commission's finding that the damage, within tolerance limits, is in the crates when delivered to the carriers.

The narrow concept of judicial review reflected in the Supreme Court decisions is based upon the recognition of the general legislative intent that the Commission shall be the controlling regulative tribunal in its field of special jurisdiction, and as the single expert agency deliberately created for effectuating large public ends in its specific sphere.

II

Courts continue to have the power to protect shippers against wilful, malicious, negligent or

other damage to eggs caused by the carriers. Those cases will be decided when they arise. This is in the best common law tradition. When the question was put to Lord Nottingham, "Where will you stop if you do not stop here," his answer was, "I will tell you where I will stop: I will stop wherever any visible inconvenience doth appear." (Supra, Note 12.)

III

In the present case, no shipper is compelled to accept the 3 percent and 5 percent tolerances approved by the Commission and published in the tariff. The shippers are afforded an opportunity to have the exact amount of point of origin damage determined and used. The regulations afford the shipper an opportunity of presenting an inspection certificate of federal or state inspection agencies showing the extent of the physical damage to the eggs determined at the rail point of origin of the shipment immediately prior to tender for rail transportation. To the damage shown in such certificates would be added 1 percent for further damage in transit due to the inherent nature of the eggs, and the total thus computed would be deducted from the claim against the railroad for damages found to exist at destination for which the railroad might be liable.

The Interstate Commerce Commission has heard the testimony of experts appearing on both sides of the controversy and has taken and analyzed page after page of testimony and numerous statistics. As an administrative body of experts, the Commission has exercised its judgment and has found that, based upon the record before it toler-

ances of 3 and 3 percent would be fair and reasonable for application throughout the country.

IV

The method, approved by the Commission, of removing from a damage claim filed on shell eggs that portion of the damage for which the railroads are not responsible does not limit carrier liability in violation of Section 20 (11) of the Act.

The broad grant of power to the Commission should not be cut down.

The language "caused by it" should not be dropped out of Section 20 (11), in reference to the liability of a carrier which may not be limited for loss, damage or injury.

The Commission found the fact that the tolerances do not include damage caused by the carriers.

That finding is supported by substantial evidence.

And, the Court is bound by that finding under the authorities.

The regulation here involved is fair and reasonable.

The regulation constitutes a part of the whole problem of the rate structure, which requires the expert experience and judgment of the Commission.

The tariff in this case is not a limitation of liability; it is no more than a factual determination of damage to eggs which is not caused by the carrier.

V

The Commission's findings of fact are supported by substantial evidence.

Judgment will be entered for the defendants, who are directed to prepare findings and conclusions and judgment pursuant to the foregoing opinion.

_____,
Judge.

(S) JOHN C. PICKETT,
Judge.

(S) WILLIS W. RITTER,
Judge.

Filed in United States District Court, District of Utah, March 10, 1954. O. K. Clay, Clerk.

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Civil Action No. C 8–53

UTAH POULTRY & FARMERS COOPERATIVE, A UTAH CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Dissenting opinion

KNOUS, *District Judge*, dissenting.

The Utah Poultry & Farmers Cooperative, a Utah corporation, brought this suit against the Interstate Commerce Commission and the United States to set aside and annul an order of the Commission which approved as reasonable a five percent (5%) damage tolerance on eggs shipped by railroads and not processed at the rail point of origin, and a three percent (3%) tolerance on eggs processed at the rail point of origin (281

1. C. C. 377), and to enjoin its enforcement. The Secretary of Agriculture of the United States filed a motion to intervene as a party plaintiff. The United States was a statutory defendant and in opposing the damage tolerance rule is represented here by representatives of the Department of Justice. In order to present its interest as a shipper, the United States in its answer admitted each and every allegation of the complaint and asked for the same relief as the plaintiff. Since the plaintiff is seeking to enjoin the enforcement of an order of the Interstate Commerce Commission, the proceeding is required to be heard and determined by a district court of three judges. 28 U. S. C. A., section 2325.

The Interstate Commerce Commission on its own motion instituted an investigation of the reasonableness and lawfulness of the special regulations governing descriptions, marks, inspection and delivery, and the handling of claims in connection with the transportation, in interstate or foreign commerce, of shell eggs from, to, and between points in the United States with a view to making findings and presenting reasonable rules, regulations, and practices relative to such transportation.

Prior to July 24, 1948, the rules and regulations governing the transportation of eggs were those which became effective July 15, 1919. Under those rules and regulations, no inspection of the contents of cases containing eggs was permitted at Boston, New York or Philadelphia when no cases showed external evidence of damage; or the cases had not been recovered in transit; or no part of the lading had shifted; or the lading

had not been transferred in transit from one car to another. At all other points the consignees were permitted to lift the lids of twenty-five per-cent (25%) of the cases, not exceeding twenty (20) in one shipment, and examine the top layers for damage. If damage to the contents was disclosed by such inspection, the rules permitted further examination of the top layers of other cases selected by the consignee. All cases containing damaged eggs were then set aside for reconditioning. The tariffs have not been basically changed since 1918.

The prior regulations required shippers of eggs to note on the shipping order and bill of lading the character of the shipment. These classifications included rehandled and repacked eggs, checked or dirty eggs, and others which were not specifically classified in connection with egg shipments except storage packed eggs, storage packed dirties, and rehandled and repacked eggs. If not more than five percent (5%) of the eggs were damaged, no claim was allowed. This five per-cent (5%) allowance was referred to as a tolerance. Where the damage exceeded five percent (5%), claims were allowed for all damage in excess thereof if the examination showed carrier liability. The tolerance applied only in connection with eggs described on the shipping order and bill of lading as current receipts and rehandled current receipts. On shipments of storage packed eggs, storage packed dirties, and rehandled or repacked eggs, claims for actual damage as evidenced by a notation made on a freight receipt by the inspectors was allowed. Under the former regulations, the carriers were

paying large payments for damage to shipments of shell eggs. In an effort to improve the situation certain changes in the regulations were proposed and were permitted to become effective by the Commission. On July 24, 1948, the instant proceeding was instituted to test the validity of these regulations.

The proposed regulations differed principally from the old regulations in the following respects: (1) They authorized the opening by the consignee of each package in the shipment, and (2) they substituted tolerances of four percent (4%) and six percent (6%) respectively, on shipments of eggs of all descriptions whether placed in packages at the rail point of origin of the shipment or at points other than the rail point of origin. The requirements under the old regulations that shippers must note on the shipping order and bill of lading the description of the shipment were eliminated in the proposed regulations.

After extensive hearings the Commission found that five percent (5%) tolerance on eggs, other than those rehandled and repacked at the rail point of origin, was not unreasonable or unlawful. The Commission further found that the proposed tolerances of four percent (4%) on eggs packed at the rail point of origin, and six percent (6%) on eggs packed at points other than the rail point of origin were not justified, but that tolerances of three percent (3%) and five percent (5%), respectively, would be reasonable.

In the course of its report the Commission states at page 383:

> Respondents are not attempting by the proposed regulations to limit carrier lia-

bility, in that they are directed against losses due to the inherent nature of shell eggs rather than against losses caused by the carriers. These regulations merely establish a means to determine the amount of damage existing at the time the shipment is received by the carrier and the amount of damage resulting solely during transportation because of the inherent nature of the shipment.

The plaintiff, the Secretary of Agriculture and others opposing the tariff allege that the damage tolerance rules approved by the Commission are attempts to limit common carrier liability and are, therefore, null and void as a matter of law because they are contrary to the provisions of 49 U. S. C. A., section 20 (11)[21] and ask this court

[21] This section provides in part: "Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability imposed;

* * * for the full actual loss, damage or injury to such property caused by it or by any such common carrier, railroad, or transportation company * * * notwithstanding any limitation of liability or limitation of the amount of recovery

to hold unlawful and set aside the Commission's report, and to direct the Commission to reject and to strike from its tariff files the damage tolerance rules approved by its report.

The intervening railroads[32] contend that there is no limitation of liability involved, and that, therefore, Section 1 (6) and not Section 20 (11) applies, and deny that the Commission's order is unreasonable or without support in the evidence. They further contend that the provisions of the tariffs are just and reasonable practices affecting the classification of eggs established by them in compliance with their duty imposed by virtue of Section 1 (6) of the Act.[33]

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or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; *and any such limitation, without regard TO THE MANNER OR FORM IN WHICH IT IS SOUGHT TO BE MADE IS HEREBY declared to be unlawful and void;* * * *." [Emphasis supplied.]

[32] One hundred and thirty-one railroads intervened as parties defendant to this proceeding.

[33] This section provides: "It is made the duty of all common carriers subject to the provisions of this chapter to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this chapter which may be necessary or proper to secure the safe and prompt

The issue presented is whether the order approving a tolerance tariff was a limitation of liability prohibited by the Carmack Amendment, (Section 20 (11) of the Interstate Commerce Act.) The railroads and the I. C. C. concede that if it is a limitation of liability it is invalid. They say, however, that tolerance damage rules and practices are designed to relieve carriers from paying claims for damages which are not attributable to the negligence of the railroads or caused by them. In other words, it is the fixing of a damage which is due to the inherent character of eggs, one which is the natural result of producing, packing and moving eggs and for which the carrier is not responsible.

The tariffs approved by the Commission provide in part:

> Upon arrival at destinations of shipments of "current receipts" or "graded" eggs in CL or LCL lots, consignee or his authorized representative shall have the privilege, before eggs leave the possession of carrier and under supervision of carrier's representative, of lifting the lids of twenty (20) cases in any carload, or of twenty-five percent (25%) with a maximum of twenty (20) cases, of the cases of any LCL lot chosen by him, and of examining the top layer thereof for the purpose of ascertaining the actual damage in that case.
>
> If such examination shows five percent (5%) or less damage, it shall be considered

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receipt, handling, transportation, and delivery of property subject to the provisions of this chapter upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful."

complete and final for the entire shipment, and a good order receipt shall be required of consignee.

If such examination, however, discloses more than five percent (5%) damage, consignee shall have the right to make further examination of shipment and to set aside all cases containing more than five percent (5%) damage. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee; or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors.

* * * * * *

SECTION 6. In connection with shipment of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability.

Each case shall be used as a unit, provided information is furnished the carrier by joint inspection or otherwise of the damage in each case. In other instances, the consignment shall be the unit.

The position of the Railroad and the I. C. C. is plausible and practical, but I am unable to arrive at a conclusion that the tariff is not a limitation on their liability to shippers of eggs. Eggs are not inherently perishable. Checked and cracked eggs, when properly handled, can be shipped interstate without further damage and can be sold to consumers. External force must

be applied to such eggs, as well as to perfect eggs, before they are damaged to the extent that they become unmarketable or claims made for damage.

The order does not authorize or approve a regulation which states that the presence of five percent (5%) or less of damaged eggs is not evidence by itself of negligence, or that unless negligence is proved by the shipper, he cannot recover for five percent (5%) of his damages. The tariff provides that when damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%), if investigation develops carrier liability. In all damage claims a shipper may recover only his loss less the tolerances provided for. Thus, one shipper who sends a carload of eggs containing two percent (2%) checked or cracked eggs, collects the same amount as another shipper who sends a carload of eggs five percent (5%) of which are checked or cracked, if the contents of both cars are destroyed or damaged as a consequence of the carrier's negligence. A shipper might ship two cases of eggs from the lot, one car having a five percent (5%) damage, the other none. The consignee would accept the undamaged car at full price and the shipper would lose five percent (5%) of the value of the second car. To me it appears inescapable that such results limit the liability of the carrier and violate the prohibition of Section 20 (11) of the Act.

This proceeding is not analogous to the cases cited by the defendants.[6] There the shippers

[6] *Bronstein v. Baltimore & O. R. Co.*, E. D. Pa., 29 F. S. 937; *Meltzer v. Pennsylvania R. Co.*, E. D. Pa., 29 F. S. 840; *Kelly v. Baltimore & O. R. Co.*, E. D. Pa., 38 F. S. 391.

sued the carriers for damages to certain perishables and the court fixed a tolerance on the basis that "there will always be a certain amount of damage which cannot be avoided even by the most careful handling" and that it was necessary "to fix a norm or limit of tolerance, within which the presence of damaged melons in the cars will not amount to proof of negligence."[85] *Bronstein v. Baltimore & Ohio R. Co.*, supra, at page 839.

[85] The concept of negligence has entered into the liability of carriers after the passage of the Cummins Amendment to the Interstate Commerce Act. The last two provisos of the amendment read:

"*Provided further*, That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: *Provided, however*, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded or damage in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery." (Act of March 4, 1915, 38 Stat. 1196, 1197, c. 176 amending the Interstate Commerce Act of February 4, 1887, c. 104, 24 Stat. 379, as amended by Sec. 7 of the Act of June 29, 1906, c. 3591, 34 Stat. 584, 5[illegible].

In *Chesapeake & O. R. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416, the Supreme Court held that a shipper's failure to give written notice of a claim to the carrier would bar the shipper from recovery for damage to its goods unless it could bring its case within the terms of the final proviso. The Court also held that the negligence referred to in the Cummins Amendment did not mean liability without fault, but negligence in fact, and that an instruction to the jury that if the damage to the shipment was not due to an act of God or the public enemy or to the inherent condition of the goods, they

I have no doubt but that the courts have the power to fix a tolerance if the evidence warrants it in a particular case, but the Commission does not have that power generally to fix a tolerance in all cases because Section 20 (11) prohibits the execution of any contract, receipt, rule or regulation which exempts a carrier from liability. Although I am reluctant to so decide, it appears to me that to hold otherwise paves the way for the establishment of damage tolerance for all commodities shipped and permits allowance which should be determined in courts of law.

I think the order of the Interstate Commerce Commission in Numbers 5792 and 30030, entitled "Special Regulations, Eggs" should be set aside and annulled.

(S) William Lee Knous,
WILLIAM LEE KNOUS,
United States District Judge.

Filed in United States District Court, District of Utah, March 10, 1954. O. K. Clay, Clerk.

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might return a verdict for the shipper, was erroneous because it resolved the issue of negligence in the shipper's favor.

The second proviso to the effect that no notice is required if damage is caused in transit by carelessness or negligence was omitted in the 1930 Amendment. Act, April 23, 1930, 49 U. S. C. A., Section 20 (11). (See Historical Note to 49 U. S. C. A., Section 20 (11).)

APPENDIX B

The following are the relevant provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087, 1088–1089):

> SEC. 202. The Congress hereby declares that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential to a prosperous agriculture and is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the Nation. It is further declared to be the policy of Congress to promote through research, study, experimentation, and through cooperation among Federal and State agencies, farm organizations, and private industry a scientific approach to the problems of marketing, transportation, and distribution of agricultural products similar to the scientific methods which have been utilized so successfully during the past eighty-four years in connection with the production of agricultural products so that such products capable of being produced in abundance may be marketed in an orderly manner and efficiently distributed. In order to attain these objectives, it is the intent of Congress to provide for (1) continuous research to improve the marketing, handling, storage, processing, transportation, and distribution of agricultural products; (2) cooperation among Federal and State agencies, producers, industry organizations, and others in the development and effectuation of research and marketing pro-

grams to improve the distribution processes; (3) an integrated administration of all laws enacted by Congress to aid the distribution of agricultural products, through research, market aids and services, and regulatory activities, to the end that marketing methods and facilities may be improved, that distribution costs may be reduced and the price spread between the producer and consumer may be narrowed, that dietary and nutritional standards may be improved, that new and wider markets for American agricultural products may be developed, both in the United States and in other countries, with a view to making it possible for the full production of American farms to be disposed of usefully, economically, profitably, and in an orderly manner. In effectuating the purposes of this title, maximum use shall be made of existing research facilities owned or controlled by the Federal Government or by State agricultural experiment stations and of the facilities of the Federal and State extension services. To the maximum extent practicable marketing research work done hereunder in cooperation with the States shall be done in cooperation with the State agricultural experiment stations; marketing educational and demonstrational work done hereunder in cooperation with the States shall be done in cooperation with the State agricultural extension service; market information, inspection, regulatory work and other marketing service done hereunder in cooperation with the State agencies shall be done in cooperation with the State departments of agriculture, and State bureaus and departments of markets (7 U. S. C. § 1621).

SEC. 203. The Secretary of Agriculture is directed and authorized:

* * * * * *

(j) To assist in improving transportation services and facilities and in obtaining equitable and reasonable transportation rates and services and adequate transportation facilities for agricultural products and farm supplies by making complaint or petition to the Interstate Commerce Commission, the Maritime Commission, the Civil Aeronautics Board, or other Federal or State transportation regulatory body with respect to rates, charges, tariffs, practices, and services, or by working directly with individual carriers or groups of carriers (7 U. S. C. § 1622 (j)).

The following are the relevant provisions of the Agricultural Adjustment Act of 1938 (52 Stat. 31, 36):

SEC. 201. (a) The Secretary of Agriculture is authorized to make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Commission. Before hearing or disposing of any complaint (filed by any person other than the Secretary) with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, the Commission shall cause the Secretary to be notified, and, upon application by the Secretary, shall permit the Secretary to appear and be heard (7 U. S. C. § 1291 (a)).

(b) If such rate, charge, tariff, or practice complained of is one affecting the public interest, upon application by the Secre-

tary, the Commission shall make the Secretary a party to the proceeding. In such case the Secretary shall have the rights of a party before the Commission and the rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination. The liability of the Secretary in any such case shall extend only to liability for court costs (7 U. S. C. § 1291 (b)).

The following are the relevant provisions of the Interstate Commerce Act, as amended. (24 Stat. 379, as amended; 49 U. S. C. § 1 *et seq.*):

NATIONAL TRANSPORTATION POLICY

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions

of this Act shall be administered and enforced with a view to carrying out the above declaration of policy (49 U. S. C. preceding § 1).

SEC. 20 (11). Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulations, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received

and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property,

except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of the title; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further,* That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or

into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice: *And provided further*, That for the purposes of this paragraph and of paragraph (12) of this section the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this chapter provided."

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Civil Action No. C-8-53

UTAH POULTRY & FARMERS COOPERATIVE, A UTAH CORPORATION, PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Final decree

This cause coming on to be heard before the undersigned who constituted the majority of a

Special District Court of three judges sitting, which was convened pursuant to the provisions of Title 28 U. S. C. A., Section 2325, upon complaints brought to set aside and annul a decision and orders of the Interstate Commerce Commission in a proceeding entitled "*Special Regulations—Eggs*," and for a mandatory injunction requiring the said Commission to cancel and set aside a certain tariff filed by the railroad defendants with the said Commission as a result of the aforementioned report and orders of the Interstate Commerce Commission; and being heard upon the evidence taken before the Interstate Commerce Commission and the report and orders of the Interstate Commerce Commission, as well as upon the arguments and briefs of counsel for all parties; and the cause having been submitted for final decree; and the court having made its findings of fact and conclusions of law which are filed herewith;

Now, therefore, upon the basis of said findings of fact and conclusions of law and for the reasons set forth in the majority opinion of the court heretofore filed, it is, upon motion of counsel for defendants,

Ordered, adjudged and decreed that the complaints be dismissed with costs against the plaintiffs.

(S) JOHN C. PICKETT,
U. S. Circuit Judge.

(S) WILLIS W. RITTER,
U. S. District Judge.

Filed in United States District Court, District of Utah, May 7, 1954. O. K. Clay, Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1954

SUPREME COURT U.S.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954.

No. ~~172~~ 7

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY,
Appellants,
v.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

STATEMENT AS TO JURISDICTION

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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Civil Action No. C 8-53

UTAH POULTRY & FARMERS COOPERATIVE,
A UTAH CORPORATION,
Plaintiff,

v.

UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION,
Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Utah Poultry & Farmers Cooperative, plaintiff-appellant, and Armour and Company and Swift & Company, intervening plaintiff-appellants, submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order and judgment of the District Court entered in this cause.

Opinion Below

The opinion of the District Court has not yet been reported. A copy of the opinion and final judgment are attached hereto as Exhibit A.*

* (Clerk's Note. The opinion and final judgment are printed as an appendix to the statement as to jurisdiction in No. 174 and are not reprinted here.)

Jurisdiction

(a) This is an action brought by the plaintiff pursuant to 28 U. S. C. (1952 ed.), Secs. 1336, 1398, 2284, and 2321-2325, to enjoin, set aside, and annul an order of the Interstate Commerce Commission. Armour and Company and Swift & Company intervened and are parties under 28 U. S. C. (1952 ed.), Sec. 2323 and Rule 24(a) of the Rules of Civil Procedure.

(b) The final order of the 3-judge District Court dismissing the complaint was entered on March 10, 1954. A petition for appeal was presented herewith and allowed on May 7, 1954.

(c) The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C. (1952 ed.), Secs. 1253 and 2101 (b).

The following decisions among many others sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

American Trucking Assns. v. *United States*, 326 U. S. 77; *Alabama G. S. R. Co.* v. *United States*, 340 U. S. 216; and *American Trucking Associations* v. *United States*, 344 U. S. 298.

Questions Presented

All points raised by the Assignment of Errors are presented by this appeal, but the major issues may be formulated as follows:

1. Whether a tariff rule which provides that no claim for damage to eggs shall be allowed where the physical damage to the eggs at destination does not exceed certain percentages, and that where damage does exceed such percentages, claims shall be allowed only for the damage in excess of such percentages is a limitation of railroad liability under Section 20 (11) of Part I of the Interstate Commerce Act, and therefore unlawful and void.

2. Whether the Interstate Commerce Commission's decision and order approving tariff rules which purport to relieve railroads from all liability for damage to shipments up to certain percentages of the eggs shipped are adequately supported by the Commission's findings and by substantial evidence on the record as a whole.

Statutes Involved

This appeal involves the interpretation of various sections of the Interstate Commerce Act, as amended (49 U. S. C., et seq.), particularly Section 20 (11) and the National Transportation Policy preceding Section 1 of the Act.

By order dated July 23, 1948, division 2, on its own motion instituted an investigation into and concerning the reasonableness and otherwise lawfulness of the special regulations governing descriptions, marks, inspection and delivery, and the handling of claims thereunder in conection with the transportation in interstate or foreign commerce, of shell eggs from, to, and between points in the United States, with a view to making findings and prescribing reasonable rules, regulations, and practices relative to such transportation. *Special Regulations, Eggs*, 284 I. C. C. 377, 378).

On and prior to that date, applicable tariff provisions contained no limitation of the railroads' liability for damage to eggs, other than to "current receipts", which are run-of-the-nest eggs before they are subjected to candling, grading, segregation of damaged eggs, and repacking (id. p. 383.)

Up to that time, with respect to current receipts, the tariffs provided that "if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability." (id. p. 404).

Effective July 24, 1948, the railroads published schedules extending the above-5 percent limitation provision to "rehandled and repacked" and "storage packed eggs" where the eggs were repacked at points not located on a railroad. (id. p. 381.) Those schedules were protested by certain parties, and although the Commission permitted them to become effective without suspension, it instituted the above-mentioned investigation one day prior to the schedules' effective date. (id. p. 380.)

There are very few rail shipments of current receipts. The Commission took note of the shippers' evidence in the following language: "Protestants take the position that such eggs are not shipped commercially, particularly to the New York market." (id. p. 383). Thus, the so-called "tolerance" in effect prior to the institution of such investigation, which culminated in this case, involved only "run-of-the-nest" eggs, many of which admittedly are broken, cracked, stained, etc; and shippers were not affected by such rule nor interested particularly in its existence or non-existence, since very few current receipts were shipped.

Utah Poultry & Farmers Cooperative, Armour and Company, Swift & Company, and other shippers and shipper organizations appeared as parties and offered evidence in the investigation proceedings before the Commission.

While the general investigation was pending, and after the schedules had been permitted to become effective which applied the 5 percent tolerance to eggs graded and packed at plants not located on a railroad, the railroads filed additional tariff schedules extending the so-called "tolerance" limitations to all rail shipments of eggs, regardless of their character, and wherever they originated. These new proposed regulations published a 6 percent "tolerance" on shipments of all kinds of eggs except those placed in packages at rail points of origin, on which a 4 percent "tolerance" was published. These new rules also provided that

where bona fide certificates of Federal and State Egg-inspection agencies showed the extent of the physical damage to eggs at their rail point of origin immediately prior to tender for rail transportation, then in lieu of the 4 and 6 percent, there should be applied the percentage of actual damage as shown on such certificates, plus 1 percent. (*Id.* p. 382.)

Such new schedules were suspended by the Commission and the Suspension proceeding was consolidated with the general investigation for hearing and disposition. (*id.* p. 378.) The tariff provisions in effect immediately prior to July 24, 1948, and those which were filed during the hearings and suspended are found in Special Regulations, Eggs, 284 I. C. C. 377, 403-408.

On February 4, 1952, the Commission issued its report and order in *Special Regulations, Eggs*, 284 I. C. C. 377, in which it found that tolerances of 3 and 5 percent respectively would be reasonable, and ordered the discontinuance of its investigation and required cancellation of the suspended schedules without prejudice to the filing of new schedules publishing tolerances of 3 and 5 percent respectively (*id.* p. 403).

Thereafter Utah Poultry & Farmers Cooperative filed its complaint in the present case, seeking to have the Commission's order of February 4, 1952, set aside, annulled and enjoined. Intervening complaints were filed by Armour and Company, Swift & Company, and the Secretary of Agriculture of the United States.

The Questions Are Substantial

This case involves questions which are of great importance to the producers, shippers, and consignees of eggs, of course, because the tariff rules approved by the Commission force the members of that industry to bear a substantial share of the damage previously borne by railroads in con-

nection with egg shipments damaged in transit. From that standpoint alone the case is deserving of the time and attention of the Supreme Court. Even more important is the fact that the questions involve basic principles of railroad liability for damage to commodities generally in the course of transportation and interpretations of Section 20(11) of the Interstate Commerce Act which affect the legal rights of all shippers of commodities susceptible to damage in transit.

I

It is axiomatic that the implied agreement of common carriers is to carry safely, and that under the common law, the carrier is absolutely liable for the safety of property transported except for damage caused by the Act of God, the public enemy, the act of the shipper himself, public authority, or the inherent vice or nature of the goods. Section 20 (11) of the Interstate Commerce Act provides that the carrier shall be liable to the lawful holder of the bill of lading "*for the full actual loss, damage, or injury to such property caused by it* or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States * * *, *notwithstanding* any limitation of liability or *limitation of the amount of recovery* or representation or agreement as to value in any such receipt or bill of lading or in any contract, rule, *regulation or in any tariff filed with the Interstate Commerce Commission* and any such limitation *without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void:* * * * (emphasis supplied).

In effect, the lower court has construed the words "caused by it", as used by Congress, to mean that the common law obligations of the carrier were changed and reduced by Section 20 (11):

In *Chicago, M. & St. P. Ry. Co.* v. *McCaull-Dinsmore Co.*, 253 U. S. 97, the Supreme Court held in effect that Section 20(11) means exactly what it says, and struck down a Commission rule which sought to establish a different measure of damages than that of the common law. See also *Yazoo & M. V. R. Co.* v. *Delta Grocery & Cotton Co.*, 1924, 98 So. 777, 134 Miss. 846; *Wood & Co.* v. *Chicago, M. & St. P. Ry. Co.*, 1926, 151 N. E. 229, 320 Ill. 341. Obviously the words "caused by it" were not intended to mean "caused by its negligence", but were inserted in Section 20(11) merely to distinguish damage occurring in transit from that resulting from the Act of God or one of the other excepted causes.

II

Closely connected with the above point is the holding by the Commission, affirmed by the lower court, that a certain percentage of the damage discovered in each damaged shipment is attributable solely to "inherent vice" of eggs. The only condition of the eggs to which the phrase "inherent vice" conceivably may be applied is their fragility. However, practically every commodity which moves is fragile to a degree. Breakage to eggs occurs only through application of force from the outside. If eggs possess an inherent vice merely because of fragility then so does every other commodity which can be broken by the application of outside force, even iron forgings. The fact that damage claims on egg shipments to the south, southwest, and Pacific Coast have not increased (284 I. C. C. 385-6) and that in the transportation of eggs by motor truck the amount of damage is negligible (*id.* p. 400) indicates that whatever the Commission referred to as "inherent vice" exists only in those eggs transported by rail to New England and Trunk Line Territories; and indeed, bearing in mind the low level of claims on shipments even to those territories in prior years, it may be said with assurance also that the "inherent vice", if it

exists, is something which has developed only in recent years.

III

Final proof of the unlawfulness of the so-called "tolerances" is found in the fact that the 4 percent (or the 6 percent) is applied to every egg shipment, whether it consists of run-of-the-nest eggs or the most carefully selected eggs. Obviously the condition of any car of eggs depends upon the care with which the eggs are selected and packed; and the numbers of eggs which are stained, checked and broken in any shipment are never the same. As pointed out by Judge Knous in his dissenting opinion, one shipper who sends a carload of eggs containing 2 percent checked or cracked eggs collects the same amount as another shipper who sends a carload of eggs, 5 percent of which are checked or cracked, if the contents of both cars are destroyed or damaged as a consequence of the carrier's negligence, regardless of their condition at origin.

As a matter of fact the Commission has stated many times that it has no jurisdiction over loss and damage claims. For example, in Bills of Lading, 52 I.C.C. 671, 685, it said:

> "The liability of common carriers for the loss of, or damage to, shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Interstate Commerce Commission. *Lost or Damaged Freight Replacement*, 43 I.C.C., 257. It can not direct the payment of a loss-and-damage claim, since the failure to pay would not be a violation of the act to regulate commerce. *Larkin Co. v. Erie & Western Transportation Co.*, 24 I.C.C., 645. The Commission is merely the instrument of the law. Its functions are administrative and quasi-judicial. Its authority to prescribe and impose upon carriers the terms and conditions which they shall write into their bills of lading is limited (1) by the common law; that is, the Commission in no event could impose upon the car-

riers the assumption of any greater liability than the common law imposes upon them; and, (2) by the statutory law, since the Commission's power and authority springs from and is limited by the organic act."

Other cases of similar import are: *Lost or Damaged Freight Replacement*, 43 I.C.C. 257, 258, *Rosser & Fitch v. A.C.L.R.R. Co.*, 91 I.C.C. 611, *S. Landow & Company, Incorporated v. Boston & Maine Railroad*, 208 I.C.C. 669-670.

When an egg shipment arrives in damaged condition at destination the extent of the damage and its source are matters that depend upon the facts in connection with the particular shipment. Nevertheless, the Commission, which itself admits that it has no jurisdiction over loss and damage claims, has promulgated a decision under which it made a sweeping finding of fact designed to apply to every future egg shipment, that all egg shipments contain certain fixed percentages of "damage" when tendered to railroads; that of all damage found at destination, those fixed percentages of eggs were not damaged in transit, but existed when the shipment was tendered to the carrier, (under the tariff rule which the Commission approved, this presumption of fact applies even though the ends of the egg cases are mashed in and the contents of the end layer of eggs are exuding). Even if Section 11 (20) of the Act did not exist and if the Commission had power to make such an order, its promulgation would constitute a gross abuse of discretion.

IV

The findings of the lower court are contrary to the evidence on the record as a whole. Merely as an example, if it were assumed that any tolerance were justified, the record is barren of evidence which would justify a difference of 2% in the "tolerance" as between eggs graded at rail points and those graded at other origins.

Conclusion

The questions presented by this appeal are substantial and of public importance. The Supreme Court of the United States should note jurisdiction of this appeal, the judgment of the District Court should be reversed, the Commission's order of February 4, 1952, should be set aside and enjoined, and the Commission should be directed to strike the assailed tariff rule from its files.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 283

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY,
Appellants,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

STATEMENT AS TO JURISDICTION

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IN THE UNITED STATES DISTRICT COURT
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CENTRAL DIVISION

Civil Action No. C 8-53

UTAH POULTRY & FARMERS COOPERATIVE, A UTAH CORPORATION,

Plaintiff,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Defendants

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, Utah Poultry & Farmers Cooperative, plaintiff-appellant, and Armour and Company and Swift & Company, intervening plaintiff-appellants, submit herewith their statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order and judgment of the District Court entered in this cause.

Opinion Below

The opinion of the District Court has not yet been reported. A copy of the opinion, findings of fact, conclusions of law and final decree are attached hereto as Exhibit A.*

*(CLERK'S NOTE.—The opinion and decree are printed as an Appendix to the Statement as to Jurisdiction in No. 171 and are not reprinted here.)

Jurisdiction

(a) This is an action brought by the plaintiff pursuant to 28 U.S.C. (1952 ed.), Secs. 1336, 1398, 2284, and 2321-2325, to enjoin, set aside, and annul an order of the Interstate Commerce Commission. Armour and Company and Swift & Company intervened and are parties under 28 U.S.C. (1952 ed.), Sec. 2323 and Rule 24(a) of the Rules of Civil Procedure.

(b) On March 10, 1954, the District Court filed its opinion denying the applications to set aside and to enjoin the enforcement of the Commission's order. The findings of fact, conclusions of law, and decree of the court were entered on May 7, 1954, and the decree is referred to by the court as the "Final Decree". An order allowing an appeal from the court's action of March 10 was signed by Judge Willis W. Ritter on May 7, 1954. However, if the lower court did not enter an order, judgment, or decree on March 10, 1954, the appeal from the court's action of March 10 is a nullity. Accordingly, a petition for appeal from the court's order, judgment, or decree of May 7, 1954, is presented to the District Court herewith

The District Court has jurisdiction to allow an appeal from the order, judgment, or decree entered on May 7, 1954, notwithstanding its previous allowance of an appeal in this case. *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 177-178.

(c) The jurisdiction of the Supreme Court to review this order and judgment by direct appeal is conferred by 28 U.S.C. (1952 ed.), Secs. 1253 and 2101(b).

The following decisions among many others sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

American Trucking Assns. v. United States, 326 U. S. 77; *Alabama G. S. R. Co. v. United States*, 340 U. S. 216; and

American Trucking Associations v. *United States*, 344 U. S. 298.

Questions Presented

All points raised by the Assignment of Errors are presented by this appeal, but the major issues may be formulated as follows:

1. Whether a tariff rule which provides that no claim for damage to eggs shall be allowed where the physical damage to the eggs at destination does not exceed certain percentages, and that where damage does exceed such percentages, claims shall be allowed only for the damage in excess of such percentages is a limitation of railroad liability under Section 20 (11) of Part I of the Interstate Commerce Act, and therefore unlawful and void.

2. Whether the Interstate Commerce Commission's decision and order approving tariff rules which purport to relieve railroads from all liability for damage to shipments up to certain percentages of the eggs shipped are adequately supported by the Commission's findings and by substantial evidence on the record as a whole.

Statutes Involved

This appeal involves the interpretation of various sections of the Interstate Commerce Act, as amended (49 U. S. C., Sec. 1 et seq.), particularly Section 20 (11) and the National Transportation Policy preceding Section 1 of the Act.

The National Transportation Policy preceding Section 1 of the Interstate Commerce Act, as amended (49 U. S. C. et seq.) and Section 20 (11) of the Interstate Commerce Act, as amended (49 U. S. C. Sec. 20 (11)) are set forth in Appendix B hereto attached.

Statement

By order dated July 23, 1948, division 2, on its own motion instituted an investigation into and concerning the reasonableness and otherwise lawfulness of the special regulations governing descriptions, marks, inspection and delivery, and the handling of claims thereunder in connection with the transportation, in interstate or foreign commerce, of shell eggs from, to, and between points in the United States, with a view to making findings and prescribing reasonable rules, regulations, and practices relative to such transportation. (*Special Regulation, Eggs*, 284 I. C. C. 377, 378.)

On and prior to that date, applicable tariff provisions contained no limitation of the railroads' liability for damage to eggs, other than to "current receipts", which are run-of-the-nest eggs before they are subjected to candling, grading, segregation of damaged eggs, and repacking. (id. p. 383.)

Up to that time, with respect to current receipts, the tariffs provided that "if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability." (id. p. 404.)

Effective July 24, 1948, the railroads published schedules extending the above 5 percent limitation provision to "rehandled and repacked" and "storage packed eggs" where the eggs were repacked at points not located on a railroad. (id. p. 381.) Those schedules were protested by certain parties, and although the Commission permitted them to become effective without suspension, it instituted the above-mentioned investigation one day prior to the schedules' effective date. (id. p. 380.)

There are very few rail shipments of current receipts. The Commission took note of the shippers' evidence in the following language: "Protestants take the position that such eggs are not shipped commercially, particularly to the New York market." (id. p. 383.) Thus, the so-called "tolerance" in effect prior to the institution of such investigation, which culminated in this case, involved only "run-of-the-nest" eggs, many of which admittedly are broken, cracked, stained, etc.; and shippers were not affected by such rule nor interested particularly in its existence or non-existence, since very few current receipts were shipped.

Utah Poultry & Farmers Cooperative, Armour and Company, Swift & Company, and other shippers and shipper organizations appeared as parties and offered evidence in the investigation proceeding before the Commission.

While the general investigation was pending, and after the schedules had been permitted to become effective which applied the 5 percent tolerance to eggs graded and packed at plants not located on a railroad, the railroads filed additional tariff schedules extending the so-called "tolerance" limitations to all rail shipments of eggs, regardless of their character, and wherever they originated. These new proposed regulations published a 6 percent "tolerance" on shipments of all kinds of eggs except those placed in packages at rail points of origin, on which a 4 percent "tolerance" was published. These new rules also provided that where bona fide certificates of Federal and State egg-inspection agencies showed the extent of the physical damage to eggs at their rail point of origin immediately prior to tender for rail transportation then in lieu of the 4 and 6 percent, there should be applied the percentage of actual damage as shown on such certificates, plus 1 percent. (id. p. 382.)

Such new schedules were suspended by the Commission and the suspension proceeding was consolidated with the general investigation for hearing and disposition. (id. p. 378.) The tariff provisions in effect immediately prior to July 24, 1948, and those which were filed during the hearings and suspended are found in *Special Regulations, Eggs*, 284 I. C. C. 377, 403-408.

On February 4, 1952, the Commission issued its report and order in *Special Regulations, Eggs*, 284 I. C. C. 377, in which it found that tolerances of 3 and 5 percent respectively would be reasonable, and ordered the discontinuance of its investigation and required cancellation of the suspended schedules without prejudice to the filing of new schedules publishing tolerances of 3 and 5 percent respectively. (id. p. 403.)

Thereafter Utah Poultry & Farmers Cooperative filed its complaint in the present case, seeking to have the Commission's order of February 4, 1952, set aside, annulled and enjoined. Intervening complaints were filed by Armour and Company, Swift & Company, and the Secretary of Agriculture of the United States.

The Questions Are Substantial

This case involves questions which are of great importance to the producers, shippers, and consignees of eggs, because the tariff rules approved by the Commission force the members of that industry to bear a substantial share of the damage previously borne by railroads in connection with egg shipments damaged in transit. From that standpoint alone the case is deserving of the time and attention of the Supreme Court. Even more important is the fact that the questions involve basic principles of railroad liability for damage to commodities generally in the course of transportation and interpretations of Section 20 (11) of the

Interstate Commerce Act which affect the legal rights of all shippers of commodities susceptible to damage in transit.

I.

It is axiomatic that the implied agreement of common carriers is to carry safely, and that under the common law, the carrier is absolutely liable for the safety of property transported except for damage caused by the Act of God, the public enemy, the act of the shipper himself, public authority, or the inherent vice or nature of the goods. Section 20 (11) of the Interstate Commerce Act provides that the carrier shall be liable to the lawful holder of the bill of lading "*for the full actual loss, damage or injury to such property caused by it* or by any such common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States * * * *notwithstanding* any limitation or liability or *limitation of the amount of recovery* or representation or agreement as to value in any such receipt or bill of lading or in any contract, rule, *regulation or in any tariff filed with the Interstate Commerce Commission* and any such limitation *without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void* * * *" (emphasis supplied).

In effect, the lower court has construed the words "caused by it", as used by Congress to mean that the common law obligations of the carrier were changed and reduced by Section 20 (11).

In *Chicago, M. & St. P. Ry. Co.* v. *McCaull-Dinsmore Co.*, 253 U.S. 97, the Supreme Court held in effect that Section 20 (11) means exactly what it says, and struck down a Commission rule which sought to establish a different measure of damages than that of the common law. See also

Yazoo & M. V. R. Co. v. *Delta Grocery & Cotton Co.*, 1924, 98 So. 777, 134 Miss. 846; *Wood & Co.* v. *Chicago, M. & St. P. Ry. Co.*, 1926, 151 N.E. 229, 320 Ill. 341. Obviously the words "caused by it" were not intended to mean "caused by its negligence", but were inserted in Section 20 (11) merely to distinguish damage occurring in transit from that resulting from the Act of God or one of the other excepted causes.

II.

Closely connected with the above point is the holding by the Commission, affirmed by the lower court, that a certain percentage of the damage discovered in each damaged shipment is attributable solely to "inherent vice" of eggs. The only condition of the eggs to which the phrase "inherent vice" conceivably may be applied is their fragility. However, practically every commodity which moves is fragile to a degree. Breakage to eggs occurs only through application of force from the outside. If eggs possess an inherent vice merely because of fragility then so does every other commodity which can be broken by the application of outside force, even iron forgings. The fact that damage claims on egg shipments to the south, southwest, and Pacific Coast have not increased (284 I.C.C. 385-6) and that in the transportation of eggs by motor truck the amount of damage is negligible (id. p. 400) indicates that whatever the Commission referred to as "inherent vice" exists only in those eggs transported by rail to New England and Trunk Line Territories; and indeed, bearing in mind the low level of claims on shipments even to those territories in prior years, it may be said with assurance also that the "inherent vice", if it exists, is something which has developed only in recent years.

III.

Final proof of the unlawfulness of the so-called "tolerances" is found in the fact that the 4 percent (or the 6 per cent) is applied to every egg shipment, whether it consists of run-of-the-nest eggs or the most carefully selected eggs. Obviously the condition of any car of eggs depends upon the care with which the eggs are selected and packed; and the numbers of eggs which are stained, checked and broken in any shipment are never the same. As pointed out by Judge Knous in his dissenting opinion, one shipper who sends a carload of eggs containing 2 percent checked or cracked eggs collects the same amount as another shipper who sends a carload of eggs, 5 percent of which are checked or cracked, if the contents of both cars are destroyed or damaged as a consequence of the carrier's negligence, regardless of their condition at origin.

As a matter of fact, the Commission has stated many times that it has no jurisdiction over loss and damage claims. For example, in *Bills of Lading*, 52 I.C.C. 671, 685, it said:

> "The liability of common carriers for the loss of, or damage to, shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Interstate Commerce Commission. *Lost or Damaged Freight Replacement*, 43 I.C.C., 257. It can not direct the payment of a loss-and-damage claim, since the failure to pay would not be a violation of the act to regulate commerce. *Larkin Co.* v. *Lyle & Western Transportation Co.*, 24 I.C.C. 645. The Commission is merely the instrument of the law. Its functions are administrative and quasi-judicial. Its authority to prescribe and impose upon carriers the terms and conditions which they shall write into their bills of lading is limited (1) by the common law; that is, the Commission in no event could impose upon the carriers

the assumption of any greater liability than the common law imposes upon them; and, (2) by the statutory law, since the Commission's power and authority springs from and is limited by the organic act."

Other cases of similar import are: *Lost or Damaged Freight Replacement*, 48 I.C.C. 257, 258; *Rosser & Fitch* v. *A.C.L.R.R. Co.*, 91 I.C.C. 611; *S. Landow & Company, Incorporated*, v. *Boston & Maine Railroad*, 208 I.C.C. 669-670. When an egg shipment arrives in damaged condition at destination the extent and source of the damage are matters that depend upon the facts in connection with the particular shipment. Nevertheless, the Commission, which itself admits that it has no jurisdiction over loss and damage claims, has promulgated a decision under which it made a sweeping finding of fact designed to apply to every future egg shipment, that all egg shipments contain certain fixed percentages of "damage" when tendered to railroads; that of all damage found at destination, those fixed percentages of eggs were not damaged in transit, but existed when the shipment was tendered to the carrier, (under the tariff rule which the Commission approved, this presumption of fact applies even though the ends of the egg cases are smashed in and the contents of the end layer of eggs are exuding). Even if Section 20 (11) of the Act did not exist and if the Commission had power to make such an order, its promulgation would constitute a gross abuse of discretion.

IV.

The findings of the lower court are contrary to the evidence on the record as a whole. Merely as an example, if it were assumed that any tolerance were justified, the record is barren of evidence which would justify a difference of 2% in the "tolerance" as between eggs graded at rail points and those graded at other origins.

Conclusion

The questions presented by this appeal are substantial and of public importance. The Supreme Court of the United States should note jurisdiction of this appeal, the judgment of the District Court should be reversed, the Commission's order of February 4, 1952, should be set aside and enjoined, and the Commission should be directed to strike the assailed tariff rule from its files.

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APPENDIX B

National Transportation Policy

It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 20 (11) of Part I of the Interstate Commerce Act (49 U. S. C. Sec. 20 (11)).

Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an

adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any receipt or bill of lading, or in any contract, rule, regulation, or in any traffic filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void. Provided, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: Provided, however, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and

declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this title; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission is empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: Provided further, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: Provided further, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad: Provided further, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that

the carrier has disallowed the claim or any part or parts thereof specified in the notice: And provided further, That for the purposes of this paragraph and of paragraph (12) of this section the delivering carrier shall be construed to be the carrier performing the line haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: And provided further, That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this chapter provided.

Nos. 6, 11, 7, and 12

Office Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1955

SECRETARY OF AGRICULTURE OF THE UNITED STATES,
APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

UTAH POULTRY & FARMERS COOPERATIVE,
APPELLANT

v.

UNITED STATES OF AMERICA, AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

BRIEF FOR THE UNITED STATES AND THE SECRETARY OF AGRICULTURE

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OPINIONS BELOW

The opinion of the District Court (R. 105-144) is reported at 119 F. Supp. 346. The report of the Interstate Commerce Commission (R. 11-54) appears in 284 I. C. C. 377.

JURISDICTION

The final decree of the three-judge District Court was entered on May 7, 1954 (R. 149). The peti-

tion for appeal in No. 6 was presented and allowed on May 7, 1954 (R. 150). The petition for appeal in No. 11 was presented and allowed on June 8, 1954 (R. 159, 160).[1] Probable jurisdiction was noted on October 14, 1954 (R. 1288; 348 U. S. 807). The jurisdiction of this Court is conferred by 28 U. S. C. 1253 and 2101(b).

QUESTIONS PRESENTED

1. Whether tariff regulations providing that railroad carriers will be responsible for claims for physical damage to shell eggs only to the extent that such damage is in excess of specified percentages, without regard to the evidence as to actual responsibility, limit the carriers' liability and are therefore unlawful and void under Section 20(11) of the Interstate Commerce Act.

2. Whether the order of the Interstate Commerce Commission approving such tariff provisions is invalid for lack of adequate findings.

STATUTE INVOLVED

Section 20(11) of the Interstate Commerce Act, as amended (24 Stat. 379, as amended, 49 U. S. C. 1 *et. seq.*) is set forth in the Appendix, *infra*, pp. 41-45.

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[1] Appeal was taken in No. 6 from the District Court's opinion of March 10, 1954, as a precautionary measure, and is supplanted by the timely appeal from the "Final Decree" of May 7, 1954. It is settled, and not disputed, that the District Court could allow the second appeal, notwithstanding its earlier action allowing the precautionary appeal. *United States v. Crescent Amusement Co.*, 323 U.S. 173, 177-178. The appeal in No. 6 should be dismissed.

STATEMENT

This is a direct appeal from the judgment of a three-judge District Court dismissing a complaint which sought to enjoin and set aside an order of the Interstate Commerce Commission. The contested order approved the inclusion in railroad rate schedules of provisions freeing the carrier from responsibility for damage to shell egg shipments, except to the extent that the damage exceeds certain specified percentages of each shipment, without regard to evidence as to responsibility for the damage.

The proceedings below were instituted by the Utah Poultry & Farmers' Cooperative against the Interstate Commerce Commission and the United States. The Secretary of Agriculture[2] and two large shippers of eggs (Armour & Co. and Swift & Co.) intervened as plaintiffs, and some 131 railroads intervened as defendants. The United States, although named as statutory defendant (62 Stat. 969, 28 U. S. C. 2322), filed answer in the District Court admitting the allegations of the complaint and opposing the damage tolerance rules

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[2] Section 201 of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, 36, 7 U.S.C. 1291), authorizes the Secretary of Agriculture to "make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same," with all of the "rights of a party to invoke and pursue original and appellate judicial proceedings involving the Commission's determination." Similar authority is also conferred on the Secretary by section 203 (j) of the Agricultural Marketing Act of 1946 (60 Stat. 1087, 1088-1089, 7 U.S.C. 1622) and section 17 (9) of the Interstate Commerce Act (54 Stat. 916, 49 U.S.C. 17 (9)).

established under the Commission's order. It now joins the Secretary of Agriculture in this appeal.

I. Summary of the Administrative Proceedings before the Commission

In 1948, the railroads, appellees herein, published new tariff schedules covering the shipment of shell eggs. The schedules specified the inspection procedure to be allowed at the point of delivery of shell egg shipments, and stated that as to certain shipments the railroad carriers would pay claims for damage only if the specified inspection procedure disclosed damage exceeding five percent of the shipment, and only to the extent of the excess.

Under protest by certain shippers, Division 2 of the Interstate Commerce Commission permitted the tariff to become effective on July 23, 1948, and then initiated an investigation into the problem of claims for damages to shell egg shipments. During the course of that investigation, the appellee railroads filed an amended tariff schedule, applying a graduated "tolerance" percentage to all categories of shell egg shipments, to become effective May 11, 1950. Upon protest by the Secretary of Agriculture, the Department of the Army, the private appellants herein and others, the proposed tariff was suspended, and the hearing on the protest was consolidated with the investigative proceeding, with the railroads named as respondents.

After hearing, on February 4, 1952, the Commission issued the order contested in this action, disapproving the tariff schedule as published, but

approving the filing of similar schedules amended to specify lower percentages of exemption.

The facts before the Commission, as shown by its report, are for the most part not in dispute.

a. *Damage claims on eggs transported by rail*

Though the perishable character of eggs is due both to fragility of the shell and the likelihood of internal damage or decomposition, damage from the latter cause is not in question in these proceedings (R. 26, 41). As to the problem of shell damage, which is of concern here, the Commission found that the carriers had been paying large claims, that such claims had increased substantially in cities along the eastern seaboard during the decade or so preceding its decision, and that "[i]n an effort to improve that situation" the railroads had proposed the contested tolerances—percentages of damage for which they would not be liable (R. 15, 22-28). The increased claims giving rise to these efforts were most marked in New York City, with lesser, though "large," claims accruing in Baltimore, Newark, Philadelphia, and other eastern cities. Generally, no increase was found to have occurred elsewhere than in such eastern cities. (R. 22.) The Commission rejected the suggestion of the railroads that the difference could be explained on the ground that receivers of eggs in the east were more "critical" than those in the rest of the country (R. 29-30).

During 1947, 9,656 cars of eggs were shipped to New York, Philadelphia, Baltimore, and Boston,

of which 7,638 (79%) were to New York. Of the total, there were 5,659 cars containing damaged eggs (so-called "claim cars"), and of these 5,044 (89%) were shipments to New York. Expressed in another form, the figures found by the Commission showed the following ratios of eggs damaged to eggs received in the eastern cities where the largest incidence of claims occurred:[3]

	Total received (dozens)	Total damaged (dozens)	Percentage damaged
New York (12 mo.)	137,484,000	3,179,003	2.31
Philadelphia (12 mo.)	12,006,000	69,700	.58
Baltimore (12 mo.)	12,420,000	108,371	.87
Boston (10 mo.)	11,898,000	71,221	.60
Totals	173,808,000	3,428,295	1.97

Contrasting with the increase in damage claims in the east for rail-transported eggs, the Commission found generally that "in the transportation of eggs by motor truck the amount of shell damage is negligible" (R. 39). Since the war, shipment of eggs by motor truck has increased greatly; in 1947, receipts in the eleven principal markets were 49% by rail and 51% by truck, whereas in 1950, 7% were rail and 93% truck shipments. In New York the change was from 70% rail shipments in 1947 to 13% in 1950. (R. 27.)

[3] The figures given in the text are computed from the tables in the Commission's report at R. 23 and 24; see also R. 1083. For comparison with the figures in dozens at R. 24, we have translated the figures for carloads at R. 23 into dozens. This is accomplished by multiplying each carload by 600, the number of cases, and 30, dozens per case, or 18,000 (R. 22, 24).

b. Packing and shipment of eggs

Eggs are handled on a wholesale basis by packers, the principal shippers, who may purchase either the farmer's "current receipts" eggs—*i. e.*, as gathered from the nest, without grading—or, as has been customary in recent years, "graded eggs"—*i. e.*, graded by the farmer, though with less rigorous inspection standards than those later applied by the packer (R. 19-20). Only a negligible amount of eggs is shipped by rail under either such classification (R. 19, 250-251, 382).

The bulk of eggs handled by wholesale packers are of two classifications: "storage packed" and "rehandled and repacked" (R. 19). Storage packed eggs are "candled"—placed before a candle lamp so that the contents may be seen—for damage otherwise invisible (R. 19-20), and "clicked"—one egg tapped against another, the sound revealing shell imperfections (R. 20). These eggs are packed in standard egg cases, under uniform packing standards (R. 28). The packer may instead visually inspect each egg, without candling, removing all eggs appearing damaged and packing the remainder in the same manner as "storage packed" eggs. These eggs are classed as "rehandled and repacked" (R. 19-20.)

The Commission found that "all egg-packing plants are operated in substantially the same manner" (R. 30), presumably whether operating at off-rail points or at points on the railroad. Packing standards are reasonably uniform (R. 30), the packers seek "to achieve perfection" (R. 31), and

no damaged eggs are deliberately included in packing (R. 32). The Commission also found, however, that careful inspection employed in packing unavoidably misses some imperfect eggs (R. 31). And usually there is no inspection by the railroads for concealed damage at the point of origin (R. 21).

In ten percent of egg shipments, inspection and grading are supervised by the Department of Agriculture. This supervision involves sampling carefully a random part of each shipment for departures from grading standards. (R. 31.)

c. Inspection at destination

Inspection procedures at the point of delivery differ from those at the point of origin (R. 21, 33-34). The Commission inferred from "the number and amount of claims" that "the inspection of shipments of eggs arriving at New York is being performed with a view to detecting all damaged eggs", and that such a volume of claims does "not appear to be based on a cursory inspection" (R. 34). However, the Commission also found the receivers' inspection at New York to be "merely visual," and described it in some detail as a "top-layer joint inspection," not involving an egg-by-egg examination even in repacking and reconditioning cases showing external signs of damage (R. 33). The Commission noted, in addition, that a substantial percentage of damage at origin is of a type that "could not be detected by the kind of inspection performed" at destination (R. 31).

The inspection at destination is necessarily con-

ducted under somewhat adverse conditions. Inspection must be performed upon arrival, jointly by carrier and consignee, prior to delivery to the consignee (R. 32-33), as required under the applicable tariff regulations (R. 50; and see prior regulations, R. 44, 47). The joint inspection involves visual inspection a layer at a time, halted at the first layer showing no damage (R. 33).

Comparing the effectiveness of inspections at origin and destination, the Commission referred to studies by the Department of Agriculture of loaded cars at the point of shipment. These showed that approximately 3.4 percent of the eggs were to be classed as imperfect at the point of shipment, although, of this amount, 1.9 percent represented "checks" found by candling and clicking which "could not be detected by the kind of inspection performed at New York." (R. 31.) Similarly, the Commission cited railroad surveys of loaded cars at different points of origin showing average percentages of damage ranging from 1.8 percent to 3.4 percent, with variations between shipments ranging from .93 percent to 7.26 percent (R. 32).

As to the effectiveness of the usual inspection at the destination, conducted jointly by carrier and consignee, the Commission referred to other surveys by the Department of Agriculture. These disclosed that after such inspections and acceptance by the consignee, and after reconditioning to remedy rail-caused damage, careful examination revealed previously undiscovered damage in amounts ranging from 3.5 to 7.3 percent. (R. 34,

236, 266-67, 280-81, 448-59, 467-71, 477-93, 508-16, 987.) While the Commission stated that these studies had not been shown to have been made before further handling (R. 34), there was undisputed testimony that the studies had been made "at the railroad dock" and that the "eggs had not been moved" (R. 485).

d. *Previous tolerance regulations*

The Commission's report also referred to tariff regulations in effect prior to 1948 (R. 13-15). There had been, since before 1919, a tariff rule exonerating carriers from a portion of the damage in shipments of "current receipts" eggs (R. 13). This had been approved by the Commission in 1919 on the basis of evidence that "the shippers ordinarily pack into cases of 30 dozen eggs [current receipts] approximately 18 broken or damaged eggs." *National Poultry, Butter & Egg Assn.* v. *New York Central Railroad Co.*, 52 I.C.C. 47, 49. In the same order, the Commission found no such practice with respect to other classes of egg shipments, and had concluded that as to such other classes a percentage rule would be "unreasonable and unlawful" (*id.* at 49, 59).[4]

e. *Decision of the Commission*

The Commission concluded that the regulations under consideration here were "designed to re-

[4] While the Commission made no finding on this subject in the instant case, undisputed evidence before it showed that few, if any, "current receipts" have been shipped commercially in recent years (R. 19, 250-251, 382).

lieve the carriers from paying claims for damages which are not attributable to their negligence," but were due to the "inherent nature" of the commodity transported (R. 40). Accordingly, the Commission held establishment of "tolerance" rules would not be unlawful (R. 43). However, it also concluded that percentages of tolerance smaller than those proposed would be "reasonable," and authorized the filing of new schedules containing the reduced percentages (R. 43). Specifically, the Commission ruled that, as to eggs rehandled and repacked and storage packed at the point of origin of the rail shipment, the tariff regulations might provide that the carrier would be responsible only for damage detected at destination which exceeds three percent of the eggs shipped, without regard to evidence as to responsibility (R. 42-3). As to eggs packed similarly but at off-rail points, the Commission concluded that the tariff could provide that the railroads would be liable only for damage detected at destination exceeding five percent of the shipment, again without regard to evidence of responsibility (R. 42). As to all other eggs (current receipts and graded eggs), the five percent rule was held applicable for shipments packed at both rail and off-rail points (R. 42).

Where the shipment of eggs is accompanied by a quality grading certificate of a Federal or State egg inspection agency showing the amount of imperfect eggs at the rail point of origin, the Commission approved a provision that the responsibil-

ity of the railroad would be only for damage detected by the joint carrier-receiver inspection in excess of the amount shown on the certificate, plus one percent (R. 41-2).

2. The Decision of the District Court

The three-judge District Court, Judge Knous dissenting, dismissed the complaint seeking to set aside the Commission's order (R. 105-144). The majority concluded that the tariff regulation establishing damage tolerances was "fair and reasonable," and that it constituted a "part of the whole problem of the rate structure" confided to the "expert experience and judgment of the Commission" (R. 135). Since the Commission had "found the fact that the tolerances do not include damages caused by the carriers," a finding "supported by substantial evidence," the court held that it was bound by the Commission's order (R. 135). Moreover, the court stated, the "tariff in this case is not a limitation of liability; it is no more than a factual determination of damage to eggs which is not caused by the carrier" (R. 135).

Judge Knous, dissenting, found it "inescapable" that the tariff regulations would operate to "limit the liability of the carrier," and concluded, accordingly, that they were in violation of "the prohibition of Section 20(11)" of the Interstate Commerce Act (R. 142).

3. The Interest of the Secretary of Agriculture

The Secretary of Agriculture is interested in this proceeding as the representative of the agri-

cultural community in the United States. Transportation rules and practices applicable to agricultural commodities are of great concern to the agricultural industry. See *The Transportation Problem of Agriculture*, 1940 Year Book of Agriculture, pp. 720-739. The Secretary of Agriculture is by statute authorized to "make complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products, and to prosecute the same before the Commission" (7 U.S.C. 1291(a)). Similar authority is granted the Secretary to "cooperate with and assist cooperative associations of farmers making complaint to the Interstate Commerce Commission with respect to rates, charges, tariffs, and practices relating to the transportation of farm products" (7 U.S.C. 1291(d)).

It is the position of the Secretary of Agriculture, joined by the United States, that the Commission's order of February 4, 1952, approving tariff "tolerances" with respect to claims for damages to shell eggs, is invalid, and that the District Court erred in refusing to set it aside.

SUMMARY OF ARGUMENT

I

Section 20(11) of the Interstate Commerce Act makes carriers liable "for the full actual loss, damage, or injury * * * caused by" them to property they transport, and declares unlawful and void any contract, regulation, or other attempted means of

limiting this liability. The Commission, concerned over the large damage claims railroads were paying on egg shipments to the east, approved the tolerances in issue, prescribing stated amounts of damage for which the railroads would not be liable. But the only purpose and meaning of these tolerances is to reduce the liabilities the railroads bore under Section 20(11) as it operated without the tolerances. The rules are accordingly unlawful limitations of liability.

A. It is settled and undisputed that, as the Commission noted (R. 40), Section 20(11) codifies the common law rule imposing upon the carrier liability as an insurer for the "full actual" damage to goods it transports unless it can show affirmatively that the damage was caused by (a) an act of God, (b) the public enemy, (c) an act of the shipper himself, (d) public authority, or (e) inherent vice or defect in the goods. *E.g., Adams Express Co. v. Croninger*, 226 U.S. 491, 509; *C. & O. Ry. Co. v. Thompson Mfg. Co.*, 270 U.S. 416, 421, 423; *Bills of Lading*, 52 I.C.C. 671, 679. The "full actual" loss must be recovered in every case; however "reasonable" or convenient, a device for measuring the recovery is invalid under Section 20(11) when it operates in any case to give the claimant less. *Chicago, Milwaukee & St. Paul Ry. Co. v. McCaull-Dinsmore Co.*, 253 U.S. 97; *Toker Co. v. Lehigh Valley R. R. Co.*, 12 N.J. 608.

B. The rules approved by the Commission can only serve to limit the liability demanded by Section 20(11). The tolerances the Commission au-

thorized assertedly rest upon "averages" or "normal expectancies" as to the amounts of damage to egg shipments for which carriers would not be liable under the agreed standard of Section 20(11). But these averages are then applied in every case so that even if a consignor ships perfect eggs in a given instance which are then broken through a cause for which the carrier is responsible, the carrier is automatically free of liability to the extent of the application of the tolerance rule. This is a startling reversal of the rule under Section 20(11); not only is the carrier relieved of its burden of proving that an excepted cause accounts for the damage, but the burden is conclusively presumed to have been met in every case with respect to the tolerance percentage.

To permit such a result would open the door to wholesale diminution of the rule under Section 20(11). With many or most commodities, there is presumably an "average" amount of damage in transit which might be shown to result from one of the causes for which the carrier is not liable. But the carrier must undertake to show in any given case that this excuse is present. If averages may be transmuted into universally applicable "tolerances," the carrier's burden is *pro tanto* eliminated and claimants in particular cases are necessarily denied the right Section 20(11) assures them.

II

Even if, contrary to our position, reasonableness could justify a tariff rule altering the operation of Section 20(11), the tolerances the Commission ap-

amendment has changed the common law doctrine theretofore approved by us in respect of a carrier's liability for loss occurring on his own line." *Cincinnati & Texas Pacific Ry.* v. *Rankin*, 241 U. S. 319, 326. And this meaning of Section 20(11), reaffirmed when the statute was strengthened by the Cummins Amendment of 1915,[6] has remained un-

[6] Senator Cummins pointed out that his amendment was designed, not to narrow the common law measure of liability, but only "to get rid of that part of the common law" which permitted "limitation upon the amount of recovery." 51 Cong. Rec. 9625; and see *id.* at 9778-9. The exact meaning of the statutory reference to damage "caused by" the carrier evoked discussion on the Senate floor, with some Senators expressing fear that the term could be understood to change the "standard of liability by the common carrier of freight" which should "remain that of an insurer" (51 Cong. Rec. 9625, 9780). It was proposed to change "caused" to "transported" in order to remove this possibility, a proposal viewed favorably by Senator Cummins (*id.* at 9625). However, discussion of this change revealed that it might increase the liability of the carrier beyond that of the common law (*ibid.*), and that "caused by" had been interpreted in the *Croninger* case and others to impose precisely the common law standards sought to be retained (*id.* at 9778-80). The proposal was withdrawn on this understanding and the original language of the Carmack Amendment re-adopted (*id.* at 9779-80).

Clearly recognizing that the phrase "caused by" did not limit the carrier's liability to cases of negligence, but covered liability without fault except where the specific excuses of the common law could be established, the Cummins Amendment permitted the carrier to require notice and filing of claim for losses where it was without fault but forbade such a requirement as a condition of recovery where the loss resulted from the carrier's negligence. See *Barrett* v. *Van Pelt*, 268 U. S. 85, 89-90; *C. & O. Ry. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416, 422. The proviso forbidding the notice requirement in cases of negligence was repealed in 1930 (46 Stat. 251), but the repeal does not diminish the significance of the original provision in its demonstration of the scope of the liability under Section 20(11).

mistakably clear. See, *e. g.*, *Chicago & E. I. R. R. Co.* v. *Collins Co.*, 249 U. S. 186, 192-193; *Missouri, Kansas & Texas Ry.* v. *Harriman*, 227 U. S. 657, 672; *C. & O. Ry. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416, 421-422; *Louisiana Southern Ry. Co.* v. *Anderson, Clayton & Co.*, 191 F. 2d 784, 785 (C. A. 5); *Lehigh Valley R. Co.* v. *John Lysaght, Limited*, 271 Fed. 906, 910 (C. A. 2), certiorari denied, 256 U. S. 704.

Accordingly, in an action to recover from a carrier for damage to property, the shipper establishes his *prima facie* case when he shows delivery in good condition, arrival in damaged condition, and the amount of his damages. Thereupon, the burden of proof is upon the carrier to show both its freedom from negligence and one of the excepted causes relieving it of liability. *Galveston, H. & S. A. Ry. Co.* v. *Wallace*, 223 U. S. 481, 492; *Chicago & E. I. R. R. Co.* v. *Collins Co.*, 249 U. S. 186, 191; *C. & O. Ry. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416, 420-423. And even if it proves that such an excepted cause was present, the carrier must bear the entire loss unless it can show the amount of the damage thus explained. *Schnell* v. *The Vallescura*, 293 U. S. 296, 306-307.

In one respect at least, the carrier's liability was made more rigorous under the Interstate Commerce Act than it had been at common law. Where the latter permitted a carrier in certain circumstances to limit by contract the value of the goods for which it would be liable (*Adams Express Co.* v. *Croninger, supra*), the Cummins Amendment

prohibited any limitation of liability by any means whatsoever and declared any attempted limitation "to be unlawful and void."[7] Thus, Congress carried forward and stringently enforced the traditionally severe duty of the carrier designed "to secure the utmost care in the rendering of a service of the highest importance to the community." *Santa Fe, P. & P. Ry Co.* v. *Grant Bros. Constr. Co.*, 228 U. S. 177, 184-185.

The reach of the carrier's responsibility for the "full actual loss" in every case is demonstrated in *Chicago, Milwaukee & St. Paul Ry. Co.* v. *McCaull-Dinsmore Co.*, 253 U. S. 97. In issue there was a tariff providing that the amount of the loss of property for which the carrier should be liable would be measured by the value of the property at the time of shipment. The Interstate Commerce Commission had upheld this provision "as in no way limiting the carriers' liability to less than the value of the goods but merely offering the most convenient way of finding the value." (P. 99.) Holding the clause invalid, this Court concluded that the shipper was entitled to recover the full

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[7] In this respect, the statute "proved * * * more comprehensive than was found to be desirable" (*Adams Express Co.* v. *Darden*, 265 U. S. 265, 268) and was subsequently amended to permit limitation of carrier liability to an agreed valuation, provided the shipper was given a choice of rates approved by the Commission (39 Stat. 441). This provision has no application here. Cf. *New York, N. H. & H. R. Co.* v. *Nothnagle*, 346 U. S. 128; *S. E. Express Co.* v. *Pastime Co.*, 299 U. S. 28; *Lancaster* v. *McCarty*, 267 U. S. 427; *American Ry. Exp. Co.* v. *Lindenburg*, 260 U. S. 584; *Chicago, St. P. &c. Ry. Co.* v. *Latta*, 226 U. S. 519.

actual loss measured by what he "would have had if the contract had been performed" (p. 100). In response to the suggestion that the courts were "bound by the Commission's determination that the rule [was] a reasonable one," Mr. Justice Holmes' opinion for the Court observed that "the question is of the meaning of a statute and upon that, of course, the courts must decide for themselves." (P. 99.) Recognizing "the convenience of the stipulation in the bill of lading and the arguments urged in its favor," the opinion pointed out that the question was "how the contract operates upon this case. In this case it does prevent a recovery of the full actual loss, if it is enforced." (Pp. 99-100.) Because this was so, the general terms of the Cummins Amendment, admitting of no exception for any case, precluded enforcement.

In short, the statute, consistently interpreted as retaining the common law liability of carriers, leaves no authority with the Commission to relax this liability for the "full actual loss" in such case. If, as we believe, the Commission's approval of "tolerances" in this case effects such a relaxation, it cannot stand.

B. *The tariff regulations in question limit the carriers' liability and are therefore unlawful*

The Commission declared that a five percent tolerance for eggs packed elsewhere than at rail point of origin was justified because the "damage to such eggs for which [the carriers] are not responsible averages that amount" (R. 42). The

carriers, it pointed out (R. 41), claimed "that the normal expectancy of damage to eggs which have been rehandled at origin prior to tender for rail transportation is over 3 percent, and that the normal expectancy of damage in transit due to the inherent nature of the eggs, without negligence on the part of the railroad, is approximately 1 percent." On this basis, it concluded that the five percent tolerance for eggs not processed at rail point of origin "appears reasonable"; that a three percent tolerance "would be reasonable on eggs processed at the rail point of origin"; and that, in cases where Federal or State grading inspection showed actual damage at the point of shipment, a one percent tolerance for additional damage en route should be approved (R. 41-43).

Thus, figures based upon asserted "averages" and "normal expectancies" in a general mass of cases are made to govern each particular case, regardless of the particular facts, on the ground that they are thought to be a "reasonable" device for apportioning the cost of damage to eggs in rail transportation. On the basis of the Commission's own findings, it is clear that the result must be in some considerable number of cases to deprive shippers of recovery of the "full actual loss * * * caused by" the carrier within the meaning of these quoted words in the Interstate Commerce Act. Because this is so, the regulations are invalid. Specifically, the reasons for this conclusion may be stated as follows: (1) The proposed regulations serve no purpose except to change the result which would otherwise follow from Section 20(11), and

Congress conferred upon the Commission no power to effect any such alteration. (2) The effect of the regulations is to arm the carrier in every case with a conclusive presumption that three or five percent of the damage resulted from the shipper's acts, or that one percent resulted from inherent defects, despite anything the shipper may prove in the particular case and, more significantly, despite the fact that these are matters of defense on which the carrier has the burden of proof in each case under Section 20(11).

I. It is clear under this Court's decision in *Chicago, Milwaukee & St. Paul Ry. Co. v. McCaull-Dinsmore Co.*, 253 U.S. 97 (see pp. 14, 18, 24, 25, *supra*), that a tariff regulation, however "reasonable" and "convenient" it may be as a general proposition, cannot in any case limit or preclude the shipper's right to recover under Section 20(11). It is equally clear that the regulations in this case are designed for no other purpose. Indeed, as the Commission pointed out at length (R. 22-28), its concern and its resulting decision were prompted by the steep rise in recent years of damage payments on egg shipments to the east by railroads — contrasting dramatically with the "negligible" amounts of such damage in shipments by motor truck, to which the egg traffic has been increasingly diverted (R. 27-28, 37, 39). In other words, the results under Section 20(11) have been found unsatisfactory; the regulations approved by the Commission change them.

But the Commission has heretofore recognized its inability to alter the statute's operation, ac-

knowledging that the "liability of common carriers for the loss of or damage to shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Interstate Commerce Commission." *Lost or Damaged Freight Replacement*, 43 I.C.C. 257, 258; *Bills of Lading*, 52 I.C.C. 671, 685. Matters of carrier liability "are cognizable only in the courts" (*S. Landow & Co.* v. *Boston and M. R.*, 208 I. C. C. 669, 670), and the Commission is not empowered "to prescribe rules and regulations for the settlement of claims arising from loss or damage to shipments in transit" (*Rosser & Fitch* v. *A. C. L. R. R. Co.*, 91 I. C. C. 611).

In these earlier pronouncements, the Commission saw correctly that it could not substitute its judgment of convenience or reasonableness for the rule Congress declared applicable in every case. For the "shipper's right * * * is expressly provided for" in Section 20(11) and "[n]either the carrier nor the Commission could lawfully provide" for diminution of this right. *Toker Co.* v. *Lehigh Valley R. R. Co.*, 12 N.J. 608, 615.

2. It is clear from the Commission's own findings that enormous numbers of eggs shipped by rail give rise to no damage claims. Thus, even in the four eastern seaboard cities where rising damage claims were found to present a problem, the total of damaged eggs represented only 1.97% of the total received (*supra*, p. 6). Yet under the regulations the Commission has approved, carriers are to be absolved absolutely, instead of being absolutely

liable subject to limited exceptions, of any responsibility for three or five percent (in most cases) or one percent (in some cases) of damage to egg shipments.

The result is, to state the matter in its most extreme terms, that a railroad's employees could negligently or intentionally break the tolerance percentage in any shipment and leave the railroad free of liability. The regulations, therefore, go much further than merely to shift the burden of proof the Act places upon the carrier; they actually purport to establish as a matter of law that this burden is presumed to have been met in every case to the extent of the applicable tolerance.

The vice here is not merely that the "averages" and the "normal expectancies" the Commission adopted appear to be unduly generous (see pp. 35-39, *infra*). The fundamental error is the Commission's failure to recognize that Section 20(11) forbids the application of any such regulations at all. The individual railroad's liability under the Act is not an "average" liability to shippers generally; it is a liability in every particular case to the individual who is the "lawful holder" of a receipt or bill of lading "or to any party entitled to recover thereon." Being averages, the tolerance percentages by definition fall short in many cases of reflecting the "full actual" damage for which the carrier is liable under Section 20(11). In all such cases the regulations operate as forbidden limitations of liability.

This is not to deny, of course, that the railroad

proved would be invalid. For the Commission's report discloses no "valid basis" in adequate findings for its order. *Secretary of Agriculture* v. *United States*, 347 U.S. 645, 654; *Atchison Ry.* v. *United States*, 295 U.S. 193, 201-202; *North Carolina* v. *United States*, 325 U.S. 507, 520.

Thus, for example, the Commission's grant of nation-wide tolerances contrasts vividly with its own finding that (1) only rail shipments to the east showed large damage claims, and (2) damage to eggs in shipments by motor truck was "negligible." No explanation is suggested for these discrepancies, nor is there any reason for simply granting tolerances instead of seeking further for ways to bring eastern rail shipments up to standards elsewhere in the nation or up to the standards of truck shipments. The result fails markedly to serve the purpose sought by both the common law and the Interstate Commerce Act through a rigorous standard of carrier liability—"to secure the utmost care in the rendering of a service of the highest importance to the community." *Santa Fe, P. and P. Ry. Co.* v. *Grant Bros. Constr. Co.*, 228 U.S. 177, 184-185.

The Commission's tolerances, based largely on the average percentage of damage it found to be undetected at the point of shipment, overlook the undisputed fact that at least a comparable amount escapes detection at the destination. Far from being a "reasonable" accommodation, this weighs the critical factor of human error wholly in the carrier's favor.

Another flaw is the utter absence of support for the conclusion that an average of one percent of the damage in receipts of egg shipments is due to "inherent defects." Examination of the Commission's report reveals that this figure was merely asserted, not proved, by the carriers. And the Commission had reached precisely the opposite conclusion in 1919. *National Poultry, Butter & Egg Assn. v. N. Y. Cent. Ry. Co.*, 52 I.C.C. 47, 54.

Similarly, the difference between the three percent tolerance for eggs packed at rail point of origin and the five percent tolerance for eggs packed elsewhere finds no justification in the Commission's report. Indeed, the pertinent evidence and findings strongly demonstrate that there should be no difference at all. For the Commission found that packing standards are substantially uniform, that off-rail packers usually carry their eggs to the railroad by truck, and that damage in truck transportation is "negligible." These findings leave the two percent difference at best inexplicable.

In sum, the Commission's order fails by its own test of "reasonableness," even apart from our primary argument that, however reasonable it might seem, a rule limiting the liability imposed by Section 20(11) is necessarily unlawful.

ARGUMENT

I

The Tariff Provisions Approved by the Commission, Relieving Railroad Carriers from Responsibility for Fixed Amounts of Damage to Shipments of Shell Eggs, Are Limitations of Liability Expressly Prohibited by Section 20(11) of the Interstate Commerce Act

The error of law we believe to underlie the decision of the Commission and the court below may be briefly epitomized: The Commission was concerned because damage claims paid in accordance with Section 20(11) of the Interstate Commerce Act were resulting in high losses to the railroads on egg shipments to the east. To remedy this situation, it approved a regulation which decreases the recoveries otherwise available under Section 20(11). In a word, it undertook to alter the statutory mandate, an action beyond its power. *Chicago, Milwaukee & St. Paul Ry. Co.* v. *McCaull-Dinsmore Co.*, 253 U.S. 97; *Toker Co.* v. *Lehigh Valley R. R. Co.*, 12 N.J. 608.

Under the tolerance rules the Commission authorized, a shipper may deliver eggs free from damage to the carrier; through the carrier's gross negligence or some other cause for which the carrier is ordinarily liable, five percent of the eggs may be damaged; and, even if these facts are established, the carrier is wholly without liability. The result, we submit, flatly contradicts Section 20(11) of the Interstate Commerce Act. It is clear under this statute that a carrier is in every case absolutely liable for damage to goods it transports unless it

can sustain the burden of establishing, in each case, that the damage resulted from the act of God, inherent defect in the goods, or another of the five specific and limited excuses. Sharply reversing this unquestioned rule, the Commission here has not only relieved the carrier of its burden of proving non-liability, but, to the extent of the tolerances it authorized, has made it impossible for the shipper to recover even where he can show the carrier to have been at fault. The Commission's finding (R. 42) that the damage to rail-transported eggs "for which [the carriers] are not responsible *averages*"[5] the amount of the tolerances cannot justify this rule. For the unequivocal command of Section 20(11) guarantees to each individual shipper the right to recover for "the full actual loss, damage or injury to [his] property caused by" the carrier unless the latter can prove, in the particular case, a specific ground for non-liability.

A. *Section 20(11), codifying and strengthening the common law, imposes upon the carrier liability for the "full actual" damage to the goods shipped unless the carrier proves one of the specific causes relieving it of responsibility*

This settled rule under Section 20(11) was expressly acknowledged by the Commission in this case (R. 40), and neither is nor could be questioned here. Nevertheless, since our primary argu-

[5] Emphasis added.

ment is that the Commission misunderstood and failed to follow Section 20(11), it becomes necessary to summarize the history and scope of this provision.

Initially added to the Interstate Commerce Act by the Carmack Amendment of 1906 (34 Stat. 595), and "fortified" (*New York, N. H. & H. R. Co. v. Nothnagle*, 346 U. S. 128, 131) by the Cummins Amendment of 1915 (38 Stat. 1197), Section 20(11) provides in pertinent part that any common carrier subject to the Act receiving property for interstate transportation—

> shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it * * *; and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier * * * from the liability hereby imposed; and any such common carrier * * * shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon * * * for the full actual loss, damage, or injury to such property caused by it * * * notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is

sought to be made is declared to be unlawful and void * * *.

Two undisputed effects of this statute are crucial to the issues in this case: First, it codifies the common law rule that a carrier, though not an absolute insurer, is liable for damage to goods transported by it unless it can show that the damage was caused by "(a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; (e) or the inherent vice or the nature of the goods." *Bills of Lading*, 52 I. C. C. 671, 679; *C. & O. Ry. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416, 421-423; *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 509; *Hall & Long* v. *Railroad Companies*, 13 Wall. 367, 372. Second, it declares unlawful and void any "rule, regulation, or other limitation of any character whatsoever" purporting to limit this liability or the amount of the shipper's recovery.

Shortly after enactment of the Carmack Amendment, this Court had occasion to define the liability imposed by the statutory reference to "loss, damage, or injury caused by" the carrier, and it was noted that this language "plainly implies a liability for some default in its common law duty as a common carrier." *Adams Express Co.* v. *Croninger*, 226 U.S. 491, 507. Later, when an effort was made to read in the Amendment, as construed in *Croninger*, a contraction of the common law liability, the Court declared that neither *Croninger* nor "any other of our opinions holds that this

in a given case may be able to prove that acts of the shipper or some other excepted cause accounts for some or all of the damage in a shipment of eggs. It means only that averages expressed in tariff regulations may not substitute for such proof in any case.

To hold otherwise opens the door, as the dissenting judge observed (R. 144), to similar departures from Section 20(11) for all kinds of commodities. It could presumably be demonstrated that some average amount of damage in other kinds of goods shipped by rail results from acts of the shipper, inherent defects, or even acts of God. On the Commission's theory, it would seem to follow that such averages could become "tolerances" applicable in every case. While there is no indication that the Commission proposes any such wholesale mitigation of carrier responsibility, the fallacy suggested by such large-scale possibilities is no less present in the one instance involved here.

Moreover, even as applied in the single area of

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[8] It should be noted, however, that the Commission's reliance upon so-called "inherent defects" in eggs is erroneous. The "inherent vice" exception to carrier liability is applicable only in cases where damage arises solely from the nature of the property without intervening human agency—as in cases of loss or damages resulting from decay, fermentation, evaporation or natural shrinkage. See *e.g.*, *Austin* v. *Sea-Board R. Co.*, 188 F. 2d 239, 240-241 (C.A. 5); *Akerly* v. *Railway Exp. Agency*, 96 N.H. 396, 397-403, 77 A. 2d 856, 858-862; *Jackson & Perkins Co.* v. *Mushroom Transp. Co.*, 351 Pa. 583, 585-591, 41 A. 2d 635, 636-639, certiorari denied, 326 U.S. 733; *Watson Bros. Transp. Co.* v. *Domenico*, 118 Colo. 133, 137, 194 P. 2d 323, 325. The exception can have no application to shell eggs, which do not break without the application of external force.

egg shipments, the mitigation of the carrier's statutory liability accomplished by the Commission's theory is by no means unsubstantial. As we have noted, *supra*, pp. 6, 28, computations based upon the Commission's findings show that the total of eggs for which damage claims were filed in 1947, for the eastern seaboard cities revealing the largest incidence of claims, was less than two percent of the eggs received. Yet the tolerance percentages applied to these shipments under the tariff regulations are either three percent (packed at rail origin) or five percent (packed elsewhere), but in either event in excess of the average damage. It is to be noted, furthermore, that the tolerance percentage is a fraction of the shipment, not a fraction of the claim the holder of the bill of lading might otherwise recover. Thus, if the total damage claimed is ten percent, the five percent tolerance cuts the claim in half. And the Commission's expert testified that the regulations in operation served to take "anywhere from 35 to 40 percent off the face value of the claim" (R. 188; and see R. 482). This, clearly enough, is a vigorous revision of the situation of which the railroads had complained. Whatever its supposed wisdom (but see Point II, *infra*), this limitation of the liability imposed by Section 20(11) is unlawful.

This conclusion is not impaired by the fact—relied upon by both the Commission (R. 13-15) and the District Court (R. 121-122)—that in 1919, in an unreviewed and unimportant decision, the Commission authorized a five percent tolerance

rule for "current receipts" eggs—*i.e.*, "run-of-the-nest eggs as received at the farms, ranches, and packing plants, before candling, grading, segregation of damaged eggs, and repacking" (R. 19). *National Poultry, Butter & Egg Assn.* v. *New York Central R. Co.*, 52 I. C. C. 47. In issue there were broad five percent tolerance rules promulgated by the railroads (pp. 48-49). After hearing, the Commission ordered the rules revoked as "unreasonable," leaving them effective only with respect to "current receipts." As to these, the Commission noted (p. 49), it was "practically admitted by both the complainants [shippers] and the defendants [carriers], that it would be reasonable to continue to apply the 5 percent rule to shipments of current receipts * * *." Thus, this asserted precedent was practically stipulated by the shippers of eggs, who were appropriately unconcerned with the unimportant category of "current receipts" (see pp. 7 and 10, fn. 4, *supra*) and who prevailed in their primary effort, to defeat the tolerances with respect to the categories which were significant in rail shipments. Understandably, the decision was not appealed by the shippers.

Similar considerations minimize other "tolerance" decisions of the Commission referred to by the District Court (R. 122)—cases considering weight losses resulting from moisture evaporation and problems of so-called "scale tolerance." *Crouch Grain Co.* v. *A. T. & S. F. Ry. Co.*, 36 I. C. C. 265, reaffirmed, 41 I. C. C. 717; *Weight Tolerance Rule*, 192 I. C. C. 71; *Fuel Sales Corp.* v. *Delaware*,

L. & W. R. Co., 225 I.C.C. 288, 291. None of these decisions purported to establish an effective limitation upon carrier liability; indeed, the Commission expressly acknowledged in the *Crouch Grain* case (41 I. C. C. at 719) that "the carriers' liability for losses must be determined, not by the Commission, but by the courts." And when a carrier attempted in a recent action by a coal shipper to invoke a "moisture evaporation" tolerance to preclude recovery for an amount less than the tolerance, the attempt was tersely rejected by the New Jersey Supreme Court on the ground that it conflicted with Section 20(11). *Toker Coal Co. v. Lehigh Valley R. R. Co.*, 12 N.J. 608, 615.

This, after all, remains the decisive point, whatever the Commission may have contended possible in its few unreviewed decisions dealing with tolerances. Insofar as such decisions intend, or are relied upon, to limit the shipper's rights as defined in Section 20(11), they are unlawful and void.

II

The Commission's Order Is Unreasonable and Unsupported by Adequate Findings

We have urged as our primary argument against the Commission's order that it violates Section 20(11) and that its supposed reasonableness and convenience cannot cure this fatal infirmity. However, even on the Commission's own view of its powers, its order could not be sustained. For analysis reveals the lack of rational basis for the tolerances the Commission allowed—or, indeed, for any sys-

tem of nation-wide tolerances based upon the variety of national experience the record reveals. This deficiency would not only be sufficient, in any event, to invalidate the order on the ground that the Commission's report fails to disclose a "valid basis" for it. *Atchison Ry.* v. *United States*, 295 U. S. 193, 201-202; *New York* v. *United States*, 331 U. S. 284, 301-310; *North Carolina* v. *United States*, 325 U. S. 507, 520. It serves, in addition, to show that even if it were open to choose between the undeviating policy of Section 20(11) and the exception the Commission has approved, the statute as written better serves the end of promoting a wise transportation policy.

1. Two facts found by the Commission cast a cloud over its premise that tolerances provide a reasonable means of solving the problem of damage claims in rail transportation of eggs: First, the finding of sharp differences between such claims on the eastern seaboard and elsewhere (R. 30), and, second, the finding that similar claims are negligible for eggs transported by truck (R. 39). The Commission specifically rejected the carriers' suggestion that receivers of eggs in the east, particularly in New York, are more critical than receivers elsewhere, thus accounting for the greater number of claims (R. 29-30). The Commission also found (R. 29) that the railroads "have done their utmost to eliminate the damages and little, if any, improvement may be expected from better loading practices." But remarkable by its omission is any indication of why rail shipments of eggs

outside the east should show little damage and why motor shipments everywhere should show practically none.

While such questions remain unanswered, it seems a poor solution to eliminate the need for answers by simply granting nation-wide tolerances to the railroads. The result eliminates the incentive eastern railroads would otherwise have to seek earnestly for the happier solution their western colleagues appear to have found. It assures the latter that their more successful efforts are to some degree superfluous. It diminishes, in short, the incentive provided by Section 20(11) and the common law standard it codified—"to secure the utmost care in the rendering of a service of the highest importance to the community." *Santa Fe, P. and P. Ry. Co.* v. *Grant Bros. Constr. Co.*, 228 U. S. 177, 184-185.

2. As the basis for its approval of the three and five percent tolerances, the Commission found (R. 42) that eggs packed for shipment contain a residual amount of undetected damage, and that shipment aggravates this undetected damage. Therefore, it concluded, of the amount of damage at destination, the origin damage plus the amount of aggravation must be eliminated to show the amount of damage for which the railroad is liable (*ibid.*). But the Commission's findings plainly show that the damage remained undetected at origin only because no commercially available method of inspection could detect it; for it also explicitly found that shippers strive for perfection

(*supra*, pp. 7, 8). At the same time the Commission found that the joint inspection at destination was "merely visual" and less exacting than the inspection by the packer at the origin (*supra*, p. 8). It would seem necessarily to follow that at least the percentage of damage escaping detection at the point of origin is overlooked at the destination. And this conclusion is squarely supported by other undisputed evidence reviewed by the Commission in its order. Thus, studies made of shipments after receipt showed residual damage, undiscovered by the joint inspection, at least equal to the average of undetected damage found to exist at the point of origin (*supra*, pp. 8-10).

The Commission concluded, nevertheless, that these studies, which disclosed the superficial nature of the inspections for damage at destination, indicated that the inspection at destination was "being performed with a view of detecting all damaged eggs" (R. 34), and that it was "reasonable" to credit the railroad with a tolerance for human error prior to shipment without any corresponding credit to the shipper for the demonstrated human error at destination. On this unsupported characterization of the inspection procedures, contrary to the evidence reviewed in the Commission's report, the carrier escapes liability for a fixed percentage of the damage discovered at destination plus the substantial percentage which remains undiscovered. This assertedly convenient accommodation—charging the shipper with the undetected damage at both ends of the journey—scarcely

seems a "reasonable" adjustment of the competing interests. Cf. *Smith* v. *Louisville & Nashville R. Co.*, 202 Iowa 292, 295. Its propriety would be doubtful even if Congress had not precluded any adjustment of any kind different from the requirements of Section 20(11).

3. The Commission's conclusion as to damage resulting from "inherent vice" is supported by no adequate finding or evidence disclosed in the present report, and is directly contrary to the Commission's findings on the same subject in 1919. *National Poultry, Butter & Egg Assn.* v. *N. Y. Cent. R. Co.*, 52 I.C.C. 47. In the instant case the Commission concluded that shell damage overlooked through human error becomes aggravated in transportation and causes damage to other, sound eggs (R. 42). This appears to be the sole basis for its approval of that portion of the contested regulation which specifies that, for Government-inspected shipments, the "tolerance" will be one percent in addition to the percentage of actual damage shown by the grading certificate (R. 41-42). To an unspecified extent, it is the partial basis of the other percentages (R. 41). The whole of the discussion of the "inherent nature" of eggs in the Commission's order (R. 41) and the opinion of the District Court (R. 122) revolves about this "normal expectancy" of further damage to weakened shell structures (see, *e.g.*, R. 41, R. 118-119).

But while the Commission concluded that the "slightest movement in transportation may cause additional damage" to weakened eggs (R. 42), it

nowhere indicated any finding or evidence upon which it calculated the amount of additional damage resulting from this source. Testimony by the principal railroad witness (Jensen, R. 286) showed that no tests had been made of the shocks checked eggs could withstand. The sole reference in the Commission's order to the basis for its calculation is the statement that "respondents [the carriers] take the position that * * * the normal expectancy of damage in transit due to the inherent nature of the eggs * * is approximately 1 percent" (R. 41).

In 1919, however, after a hearing on egg damage problems, the Commission had expressly found it improper to conclude that "cracked eggs * * * may reasonably be expected to develop into broken eggs by the necessary and ordinary shocks of transportation." *National Poultry, Butter & Egg Assn. v. N.Y. Cent. R. Co., supra,* at 54. This was based upon testimony "as to the experiments with cases containing cracked eggs which were subjected to shocks similar to those received in railroad transportation" which indicated "that cracked eggs resist shocks almost as well as sound eggs" (*ibid.*).

Without reference to the earlier proceedings, and, more importantly, without any indication of a factual basis for its calculation, other than the assertion of the carriers, the Commission has concluded now that damage from this "inherent vice" is one percent.

4. In yet another respect, the Commission's conclusions depart from the facts disclosed in its report. The order approves a "tolerance" percent-

age of three percent for all eggs packed at the point of rail shipment; and also finds "reasonable" a five percent figure for shipments packed at off-rail points. There are, however, no findings, and there was no evidence, supporting the assumption that the damage concealed in the latter shipments is over 66 percent greater.

In fact, such evidence as the report considers on this subject demonstrates that the difference in rail-point-of-origin damage between the two types of shipments is at most unsubstantial. The report indicates that there is no difference in packing procedures or standards between packers at off-rail points and those located on the railroad (R. 30). The Commission noted that shipments packed at off-rail points are usually "trucked" to the point of rail shipment (R. 32, 36), and "in the transportation of eggs by motor truck the amount of shell damage is negligible" (R. 39). Similarly, Army experience with truck shipments was cited as showing "about 0.14 percent" of the shipments damaged (R. 39). Thus, the finding as to packing procedures and carriage to the railroad weigh heavily toward the conclusion that off-rail shipments are turned over to the railroad in substantially the same condition as shipments packed at the rail point of origin. Yet without countervailing findings and with no indication of its reason for the distinction, the Commission ordered a five percent tolerance for the former as against a three percent tolerance for the latter.

In short, the report, on its own premises, woul require the Court "to rescue the Commission from the deficiency of its own findings. *Unite States* v. *Champlin Rfg. Co.*, 341 U.S. 290, 301; se also *Secretary of Agriculture* v. *United States*, 34 U.S. 645, 654. Even if the premises were not con trary to Section 20(11) of the Act, the order woul be invalid.

CONCLUSION

For the foregoing reasons, the judgment of th District Court should be reversed, and the orde of the Commission should be set aside and enjoine

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APPENDIX

Section 20(11) of the Interstate Commerce Act (34 Stat. 595, as amended, 49 U.S.C. 20(11)) provides:

> That any common carrier, railroad, or transportation company subject to the provisions of this part receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or

from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory; or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws

and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however,* That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not so far as relates to values, be held to be a violation of section 10 of this part to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the Com-

mission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the no-

tice: *And provided further,* That for the purposes of this paragraph and of paragraph (12) the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further,* That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this part provided.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1955

Office Supreme Court, U. S.
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No. 6.

SECRETARY OF AGRICULTURE OF THE UNITED STATES, *Appellant*,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 7.

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY, *Appellants*,

vs.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH.

BRIEF FOR UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY, APPELLANTS.

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OCTOBER TERM 1955

No. 6.

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OPINIONS BELOW.

The majority and dissenting opinion of the District Court (R. 105 and 136) appear at 119 F. Supp. 846 and 864, respectively. The report of the Interstate Commerce Commission (R. 11) appears at 284 I. C. C. 377.

JURISDICTION.

On February 4, 1952, the Interstate Commerce Commission issued its report and order approving a tariff rule providing that the railroads would not allow a claim for loss or damage to a shipment of eggs unless and except to the extent the damage exceeds certain percentages of the eggs in each package containing damaged eggs. On January 20, 1953, the appellant, Utah Poultry & Farmers Cooperative, filed an action in the lower court to enjoin and set aside the Commission's order (R. 1, *et seq.*). The appellants, Armour and Company and Swift & Company, intervened in the lower court as a matter of right under 28 U. S. C. 1952 ed. §2323 and Rule 24(a) of the Federal Rules of Civil Procedure. The case was heard by a 3-judge district court pursuant to 28 U. S. C. A. 1952 edition §2325. On March 10, 1954, the lower court filed its opinion (R. 105), at the conclusion of which it said:

> "Judgment will be entered for the defendants, who are directed to prepare findings and conclusions and judgment pursuant to the foregoing opinion." (R. 135-136.)

Because of such decisions as *In Re Forstner Chain*

Corporation, 177 Fed. 2d 572, 576, 578, holding in somewhat comparable situations that the opinions constituted judgments, the appellants on May 7, 1954, filed their petition and other formal documents for appeal from the lower court's action of March 10 (R. 193 *et seq.*), and such appeal was designated as No. 172 (No. 7 in 1955 term). On May 7 the district court filed a formal document entitled "Final Decree" (R. 149), from which appellants filed their appeal on June 30, 1954. The appeal is No. 283 (No. 12 in 1955 term).* The jurisdiction of this court rests on 28 U. S. C. A. §§1253 and 2101(b). Probable jurisdiction was noted on October 14, 1954 (R. 1288).

STATUTES INVOLVED.

The statute involved is part I of the Interstate Commerce Act as amended (49 U. S. C. 1952 ed. §1 *et seq.*). Section 20 (11) of that Act [49 U. S. C. 1952 ed. §20 (11)] is set out in Appendix A, *infra*, p. 63.

Set forth in Appendix B, *infra*, p. 67, are the Carmack Amendment to the Interstate Commerce Act (Act of June 29, 1906, c. 3591, 34 Stat. 595), the Cummins Amendment (Act of March 4, 1915, c. 176, 38 Stat. 1197), and the first amendment to the Cummins Amendment (Act of August 9, 1916 c. 301, 39 Stat. 442).

* If the opinion of March 10 was the appealable order under 28 U. S. C. §1253, the May 7 appeal was obviously effective. If the decree of May 7 was the appealable order, then the June 30 appeal was effective. No legal principle is known under which the premature granting of an appeal from an unappealable order would deprive a court of its power to grant a valid appeal from a subsequent appealable order. In a somewhat similar situation in *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 178, this court said:

> "Under these circumstances an appellant may rely upon the latter appeal * * * and not run the risk of losing an appellate review on the appeal first allowed."

QUESTIONS PRESENTED.

The principal questions presented for review by appellant's Assignments of Errors may be formulated as follows:

1. Whether certain tariff regulations approved by the Commission and published by the railroads constitute a limitation of the railroad's liability or a limitation of the amount of recovery under §20 (11) of Part I of the Interstate Commerce Act and accordingly are unlawful and void. The regulations involved provide that no claim against a railroad for damage to egg shipments shall be allowed where the physical damage to the eggs at destination does not exceed certain percentages; and that where the damage exceeds those percentages, claims shall be allowed only in excess thereof.

2. Whether §20 (11) imposes a more limited liability upon the carrier than the common law liability rules and requires proof of negligence to establish liability.

3. Whether the susceptibility of eggs to breakage is an inherent vice which relieves the carriers from their normal common law liability.

4. If the Commission can properly approve regulations of the kind here involved, there is further presented for review the question whether the Commission's order is supported by adequate findings and substantial evidence on the records as a whole.

STATEMENT.

The immediate cause of the present controversy is that the Interstate Commerce Commission approved and the railroads, pursuant to such approval, published the following tariff provisions governing claims against the carriers for damage to shipments of eggs in transit (R. 53):

"*Section 6.*—On eggs placed in packages at rail point of origin of shipment, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 3% of the contents of the packages containing damaged eggs. Where damage exceeds 3%, claims shall be allowed for all damage in excess of 3%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 2%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 3% specified in this Section.

"*Section 7.*—On eggs placed in packages at points other than the rail point of origin, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 5% of the contents of the packages containing damaged eggs. Where damage exceeds 5% claims shall be allowed in excess of 5%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 4%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 5% specified in this Section."

Events Leading Up to the Administrative Proceedings.

The present controversy commenced shortly before July 24, 1948, when the railroads filed tariff schedules, to become effective on that date, making certain changes in the prior tariff regulations pertaining to egg shipments. Up to that time there were no tariff limitations as to the liability of a railroad for damage to shell eggs, other than "current receipts".* With respect to "current receipts", the Commission in 1919 had approved a tariff rule which limited the carriers' liability for damage to shipments of "current receipts" to damage in excess of five per cent of the total number of eggs. *National Poultry, Butter & Egg Association, et al.* v. *New York Central Railroad Co., et al.*, 52 I. C. C. 47. The basis for the Commission's order in 1919 was the "assumption that the shippers ordinarily pack into cases of 30 dozen eggs (of current receipts) approximately 18 broken or damaged eggs" (*Id.* at p. 49). But inasmuch as the evidence introduced in that proceeding showed that there was no such practice with respect to eggs other than "current receipts", the Commission held that it "is unreasonable to continue to apply such a rule to shipments of storage-packed eggs or to shipments of current receipts when thoroughly rehandled and repacked in new cases with new standard fillers" (*Id.* at pp. 49-50). It was determined in that proceeding that a "like restriction in respect of claims for damages to shipments of eggs would be unreasonable and unlawful except when applied to current receipts or current receipts rehandled" (R. 15; 284 I. C. C. 380).

* The term "current receipts" is used to describe run-of-the-nest eggs as received at the farms, ranches, and packing plants, before candling, grading, segregation of damaged eggs, and repacking. Such eggs contain every variety of size, color, and grade, as well as a proportion of checked, broken, cracked, leakers, stained, and dirty eggs. 284 I. C. C. 383.

The Administrative Proceedings.

The tariff schedules which the railroads filed to become effective July 24, 1948 extended the 5 percent rule to shipments of all eggs except those which had been rehandled and repacked at rail origin points (R. 15 and 16; 284 I. C. C. 380 and 381). The class of eggs principally affected by the change were those rehandled and repacked at points not located on a railroad and trucked thence to a rail origin. Those schedules were protested by certain parties. The Commission permitted them to become effective without suspension (R. 15; 284 I. C. C. 380), but on July 23, 1948, one day prior to their effective date instituted a general investigation (its Docket No. 30030) "into and concerning the reasonableness and otherwise lawfulness of the special regulations governing descriptions, marks, inspection and delivery, and the handling of claims thereunder in connection with the transportation, in interstate or foreign commerce, of shell eggs from, to, and between points in the United States, with a view to making findings and prescribing reasonable rules, regulations, and practices relative to such transportation" (R. 12 and 1284; 284 I. C. C. 378).

During the course of the hearing on those regulations, the carriers filed new schedules containing proposed regulations which would have increased the damage tolerance on eggs not placed in packages at the rail point of origin from 5 to 6 percent, and, in addition, the new regulations contained a damage tolerance of 4 percent for eggs placed in packages at the rail point of origin. The operation of those schedules was suspended in I. & S. Docket No. 5792, which was consolidated with Docket 30030 for hearing and disposition (R. 12 and 17; 284 I. C. C. 378, 381). Following hearings in the combined proceedings, the Commission in the order now subject to review approved such pro-

posed regulations but limited its approval to damage tolerances in the amounts of 5 percent and 3 percent in lieu of the tolerances of 6 percent and 4 percent proposed by the carriers (R. 43; 284 I. C. C. 403).

The appellants herein and numerous other parties entered appearances and participated in the administrative proceedings above described.

Facts Concerning the Egg Industry.

To understand the operation of the tariff regulations involved, it is helpful to have some knowledge of the way in which eggs are assembled, graded, packed, delivered and sold.

The eggs originate as current receipts.* The eggs shipped by the packing companies have been rehandled and repacked either at the origin of the rail shipment or at a point beyond whence they are trucked to the point of rail shipment. New wood and fiber cases, fillers and flats are used (R. 35 and 36; 284 I. C. C. 397). Into each case, 30 dozen eggs are packed, separated from each other by the flats and fillers.** Eggs are always packed vertically with the large end up (R. 20; 284 I. C. C. 384). After the eggs are packed, the cases are closed and loaded into the cars or trucks for transportation.

By rail the eggs are shipped in standard refrigerator

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* The record contains no evidence that current receipts move by rail. One of the principal railroad witnesses testified: "Actually, I think there are no true current receipts shipped" (R. 251).

** A flat is placed in the bottom of an egg case, and a filler is placed over the flat. The flat contains depressions in which the small end of the egg rests. The fillers are crossed sections of fiberboard interlocked in such a way that 36 spaces are formed for the insertion of eggs. When the first filler is packed, another flat and filler are placed over the first layer. (R. 28; 284 I. C. C. 391.)

cars (R. 299). A normal carload contains approximately 450 or 480 cases (R. 273, 421). The types of cases, flats and fillers and the manner of loading are governed by tariff provisions (R. 292, 725, and 886). Those regulations require the shippers to note certain information on the bill of lading (R. 43-52; 284 I. C. C. 403-407).

Grading and Packing Operations.

In the process of packing, all visible checked,* cracked, leaky,** stained,*** and dirty eggs,† and those containing blood spots or other interior defects are removed (R. 21; 284 I. C. C. 385). The usual commercially accepted method of examining eggs is by candling. This process consists of placing the eggs before a candle lamp so that the contents may be seen and the eggs classified in accordance with certain fixed standards. There is keen competition between egg producers and shippers throughout the entire country. Hence, all egg producing plants are operated in substantially the same manner and according to the same competitive standards (R. 30; 284 I. C. C. 393).

In candling, grading, and packing the eggs, absolute perfection is commercially impossible because of human error, and the commercially sound shipment does contain some checked and some inedible eggs‡ (R. 30; 284 I. C. C. 393).

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* "Checked" applies to eggs with small cracks in the shells but in which the shell membrane is not broken (R. 20; 284 I. C. C. 384).

** "Leakers" are eggs on which the shells and membranes are broken to the extent that the contents thereof exude (R. 21; 284 I. C. C. 385).

*** "Stained" eggs are those on which the shell is stained or soiled from contact with broken or leaking eggs (*id.*).

† "Dirty" eggs are those with adhering dirt or with more than one-eighth of the shell surface stained or soiled (*id.*).

‡ Origin tests by the U. S. Department of Agriculture showed 1.9 percent checks and only 0.1 percent loss (R. 31, 284 I. C. C.

U. S. Department of Agriculture Inspections and Grades.

Approximately 10 percent of the eggs produced throughout the entire country is inspected and graded under supervision of the U. S. Department of Agriculture. In this operation an adequate and representative sample of the shipment is inspected, and each egg selected is usually inspected, candled, and graded (R. 31; 284 I. C. C. 393).

The eggs are also clicked together to detect checks (R. 350).

The Department of Agriculture has promulgated official U. S. specifications and weight classes for wholesale and consumer grades of shell eggs (Ex. 20 and 21; R. 330, 1123-1126). These specifications permit certain percentages of stained, dirty, or checked eggs and loss (R. 1124). For example, in order to be classed as "U.S. Specials", a lot of eggs must include at least 20 percent of AA quality and the balance of A quality; but may contain 7.5 percent in any combination of B quality, C quality, stained, dirties, or checks, and 1.7 percent loss (*id.*). "Loss" includes blood spots, meat spots, rots, and leakers (R. 330 and 476). In consumer grades AA and A, 5 percent of shell damage, consisting of 0.5 percent leakers, and 4.5 percent checks or stains, is permitted (R. 41; 284 I. C. C. 401). The tolerances are set up primarily for the purposes of making allowance for human error (R. 342).

Some New York market prices on shell eggs are shown in Exhibit No. 14 offered by railroads (R. 226, 1091). It will be noticed that some of the quotations are for "specials", "extras", "standards", and "Cons. Grade A", all of which are designations used in the U.S.D.A. grade specifications (Ex. 20 and 21; R. 330, 1121, 1125).

393-394). The 1.9 percent checks were, however, found by candling and clicking, and could not be detected by the kind of inspection performed at New York (*id.*).

The eggs are packed for shipment in wood or fiber cases, each of which contains 30 dozen eggs separated from each other by flats and fillers.

Eggs Can Be Transported Safely.

That eggs can be safely transported in such a manner that the shipper or consignee will not be damaged is shown by the following.

Eggs are safely transported in trucks. The record indicates that in the transportation of eggs by motor truck the amount of shell damage is negligible (R. 39; 284 I. C. C. 400).

Eggs were safely transported by rail in 1941. In its report, the Commission found that claims for damage to eggs throughout the entire country during that year totalled only $110,000* (R. 38; 284 I. C. C. 399), and that prior to World War II under loading and packing practices similar to those during later years, damage to shipments of eggs was reasonably low (R. 29; 284 I. C. C. 392).

Eggs are safely transported by rail to all parts of the country except Trunk-line and New England territories,** such as the South, the Southwest, and Pacific Coast. The Commission found that the egg claims which have reached substantial amounts during the past decade and longer accrue principally through shipments to Trunk-line and New England territories and that "generally there has been no increase in the damage on shell eggs moved by rail to other territories such as the South, the Southwest, and the Pacific Coast" (R. 22; 284 I. C. C. 385-6).

Eggs are transported to points in Official Territory,

* By 1947 the claims had increased to $2,338,462 (*id.*).

** Roughly speaking, these territories are that part of the country which lie east of the Buffalo-Pittsburgh line and north of the Ohio and Potomac Rivers (R. 963).

such as Biddeford, Maine, Elizabeth, N. J., Erie and Greensburg, Pa., Newark, N. J., Utica, N. Y., Worcester, Mass., and other points, with expectation of few though large damage claims (R. 38-39; 284 I. C. C. 399).

Even in 1947, 5 out of each 6 cars were safely transported to Baltimore, Md.; 3 out of each 4 were safely transposted to Boston; 1 out of each 2 was safely transported to Philadelphia; and 1 out of each 3 was safely transported to New York City.*

Initial Inspection for Rail Damage at Destination.

At all times involved there have been tariff rules governing inspection of egg shipments at destination.

Up to May 2, 1952, the rules permitted the consignee or his representative to lift the lids on 20 cases in any carload and examine the top layer thereof to ascertain whether such cases contained damaged eggs. If such examination showed no evidence of damage, it was considered final for the entire shipment and a good order receipt was required of the consignee. If such examination disclosed damage, consignee had the right "to make further examination of the shipment and to set aside all cases containing damaged eggs. Joint inspection of all such cases set aside shall be conducted by representative of carrier and consignee or his representative, and extent of damage, together with facts pertaining thereto, shall be noted on paid freight receipt or other document and signed by joint inspectors" (R. 44 and 46; 284 I. C. C. 403 to 405).

Under the regulations which became effective on May 2, 1952, pursuant to the Commission approval from which this appeal is taken, the consignee or his representative has the privilege of opening each package at no expense to the

* Based upon comparisons of figures in table at R. 23; 284 I. C. C. 387.

carrier and of initially examining the contents thereof; provided, however, on notice by the carrier, such initial examination shall be in the presence of the carrier's representative. If any package contains eggs having shell damage for which the carriers may be deemed responsible, the contents of such package shall be jointly inspected by the consignee and the carrier, or their representatives, "and such joint records shall be conclusive as to the nature and extent of damage" (R. 52 and 53).

Reconditioning Damaged Cases of Eggs.

Where eggs are damaged by a railroad, the grade of the eggs is necessarily destroyed* (R. 1001). In practice the damaged cases are repacked or reconditioned. The Commission found that this process is as follows:

> "In the repacking or reconditioning process, eggs are transferred from a damaged case to a good case one whole layer (3 dozen) at a time. In replacing the smashed and leaking eggs, inspection to the next lower layer in the case is continued until a good layer is found. If, however, there is only one leaker in the top layer that egg is replaced and the case is put in the good-order pile. In the inspection the lid must be removed completely from the case, no candling lamp is used and the eggs are not clicked. The inspection is merely visual"** (R. 33; 284 I. C. C. 395).

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* It is obvious that a case of eggs known to have been damaged is like a "pig in a poke" until the eggs have been removed from the case and the extent of the breakage determined.

** At another point in its report the Commission found: "In the inspection at destination the consignee's representative examines every egg in the cases disclosing damage." (R. 21; 284 I. C. C. 385.) The two findings directly conflict. The finding at R. 33 is based upon the testimony of a man with 40 years' experience in the egg business, who for the past 10 years has been making destination inspections and reconditioning egg shipments at New York (R. 467, *et seq.*). His testimony was supported by other shipper witnesses (R. 607, 608, and 615). The conflicting finding at R. 21 was based upon a statement by a special agent of the Com-

Joint Record of Damaged Condition.

The regulations in effect up to May 2, 1952, provided that the extent of damage together with facts pertaining thereto should be noted on paid freight receipts and other documents and signed jointly by inspectors of the carrier and consignee (R. 44, 47, and 48; 284 I. C. C. 403-4-5-6). The regulations which became effective on May 2, 1952, provided that any damage should be jointly inspected and the joint record would be conclusive as to the nature and extent of the damage (R. 50).

Method of Calculating Damage Sustained by Shipper or Consignee. Consignee Suffers Some Slight Loss on Each Damaged Shipment.

All of the prior regulations and also those approved by the Commission contain provisions under which, in case of carrier's liability, actual and necessary charges incurred for labor and material in reconditioning the damaged cases and contents showing damage shall be borne by the carrier (except that under the May 2, 1952 regulation the carrier is obligated only for a percentage of such costs

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mission's Bureau of Inquiry, who, in a special investigation, witnessed the inspection and repacking of a number of damaged egg shipments at the Erie Railroad's pier in New York City (R. 177, 178, 182). The investigators' testimony is also contradicted by the manager of the Railroad Perishable Inspection Agency, who testified that the consignee "may go through the case all the way to the bottom or he may stop at the top. That is up to him, when he is talking about damage he wants us to recognize." (R. 300). The limited nature of the special agent's inspection of the reconditioning process is emphasized by the fact that on cross-examination he was unable to recall whether the consignees "clicked" the eggs, and said: "Well, it is a pretty fast operation and I wasn't a very skilled observer but they didn't seem to have any special equipment and they did it rather quickly" (R. 194). Certainly one man's unskilled observation of what happened to a few shipments at one pier in New York City cannot be the basis for a valid finding of fact as to the general practice in that city or generally throughout the country.

where the tolerance rules apply) (R. 45, 49 and 54, 284 I. C. C. 404, 407, and 408).

In an analysis of 150 claims, the railroads found that of the total amount claimed the portion allotted to damage to the eggs was 69 percent; to labor, 26 percent; to material, 4.5 percent; and to warehouse charges, 0.5 percent (R. 38; 284 I. C. C. 399).

As recovery for damage is usually less than the cost of examining and reconditioning the cases together with the value of the damaged contents, the consignee suffers some slight loss on each damaged shipment (R. 30; 284 I. C. C. 392). This finding was made by the Commission on the basis of shipments on which no tolerances were applied.

Condition of Commercial Egg Shipments at Rail Origins and Destinations.

The Commission found as follows. A careful inspection by the U. S. Department of Agriculture made of the eggs as they were loaded into 115 railroad cars in 1948 and 1949 at points in the midwestern area, disclosed that they contained on the average (R. 31; 284 I. C. C. 393 and 394):

Stains and Dirties	Checks	Loss
1.4%	1.9%	0.1%

The 1.9 percent checks were, however, found by candling and clicking, and could not be detected by the kind of inspection performed at New York. An examination of those identical shipments at destination showed the following (*id.*):

Stains and Dirties	Checks	Loss
2.1%	2.7%	0.3%

During transportation, the stains and dirties reflected increases of 0.7 percent, the checks 0.8 percent, and the loss

0.2 percent, respectively, incident to the movement in transit (*id*).

The 115 cars contained some damaged cases at destination which were recorded and averaged into the above figures (R. 474) but the Commission took no notice of that fact. Nevertheless, the Commission found that the above figures together with results of a similar origin inspection of 737 cars indicate "an average damage of 3.4 percent at origin and 5.1 percent at destination, and typifies the character of eggs which are loaded into railroad cars at points of origin" (*id.*). The 3.4 percent is the sum of the 1.4 percent (stains), 1.9 percent (checks), and 0.1 percent (loss) in the 115 car origin inspection. Similarly, the 5.1 percent is the sum of the 2.1 percent (stains), 2.7 percent (checks), and 0.3 percent (loss) in the 115 car destination inspection.

From the above figures, the Commission concluded that: "there is a normal expectancy of shell damage in every car loaded with eggs, and that it is at least impractical to load a perfect car"* (R. 32; 284 I. C. C. 394).

The results of the U. S. D. A. 115 car origin test are corroborated by the results of a special test of 60 cars made by the railroad in Iowa and Minnesota in 1949. In that inspection, the railroads examined 15 cases in each car and 100 eggs in each such case (total, 90,000 eggs) by candling and found 2,256 checks, 98 broken eggs, and 183 stains (R. 302, 303, 1283, and 1284), from which it is easily calculated that the average condition of the 60 shipments was as follows:

Stains and Dirties	Checks	Broken
0.2%	2.50%	0.11%

* Whether anyone ever shipped a perfect car of eggs and what useful purpose would be served thereby are questionable. Whether the shipper is damaged moneywise depends upon whether or not the eggs meet grade specifications and are accordingly salable at destination.

The 115 car origin results are also corroborated by a Department of Agriculture summary of grading reports for 2,212 cars of eggs loaded in midwestern states in 1942, 1943, and 1948 (Ex. 22, R. 362 and 1128) which show the following conditions:

Stains and Dirties	Checks	Loss
1.4%	1.4%	0.1%

The 115 car destination figures are corroborated by a Department of Agriculture summary of grading reports for 2,513 cars of eggs at destination showing the following condition (*id.*):

Stains and Dirties	Checks	Loss
.5%	1.5%	0.2%

One fact which stands out in the results of all of the above tests and inspections is that the percentage of "loss" eggs was extremely low. The sound commercial shipment contains an insignificant number of broken eggs at both origin and destination unless it is damaged in the course of transportation.

Condition of Damaged Cases at Eastern Destinations.

In a table in the Commission's report (R. 24; 284 I. C. C. 388) are set forth the number of damaged cases received in 1947 at New York, Philadelphia, Baltimore, and Boston together with an analysis of the character of the damage in dozens, and the percentages represented thereby. Bearing in mind that each case contains 30 dozen eggs, it can readily be calculated that the condition of the damaged cases at New York in 1947 was as follows:

Stains and Dirties	Cracked	Loss*
3.38%	2.28%	5.45%

* Broken eggs and leakers represent total loss (R. 25; 284 I. C. C. 388).

Average condition of damaged cases received at the 4 destinations in 1947 is as follows:

Stains and Dirties	Cracked	Loss
3.68%	3.68%	5.69%

Comparison of the percentages of loss in these damaged cases with the U. S. D. A. grade specifications (Ex. 20 and 21, R. 330, 1124, 1126) reveals such high loss that such damaged cases could not comply with any U. S. grade specifications either wholesale or consumer. Similarly that amount of loss contrasts strikingly with that found either at origin or at destination in any of the test analyses of record.

The position in which the damage is found in the cases is plain from the testimony of the R.P.I.A. manager (R. 879):

> "Our inspections at destination markets show that most of the damage found is to the side of the egg and to those eggs in the first row of cells of the filler against one end of the case and the corresponding side of the center board of the case."*

* Shipper witnesses testified that damage so located in the case evidences rail damage (R. 413, 940, and 942). The Commission found:

> "Protestants contend that damage to eggs in transit is usually distinguishable from that which existed prior to rail transportation by the extent and location of the damage; that eggs damaged at the time of loading are scattered throughout the case and are not massed at any one point; that damage occurring in transit, from impacts caused by rough handling, is most severe at the outside and inside rows of the fillers where the eggs adjoin the end or side of the case, or its center partition; and that such damage does not result from packing operations. These contentions are highly problematical and overlook the fact that mass damage may also occur during the moving of the cases from the packing plant to the railroad car, in the actual loading into the car, and as a result of the manner in which the cases are loaded and braced." (R. 30; 284 I. C. C. 392, 393.)

If such damage found at New York resulted from loading specifications similar damage would be found in cars shipped to points in the United States other than New York, Boston, Philadelphia, and Baltimore.

The record contains evidence of the general condition of damaged egg shipments at New York. Exhibit 45 (R. 814-815; R. 1190-1195) shows R.P.I.A. inspection reports on the condition of 31 cars from Utah, of which 27 were shipped to New York City or adjoining cities, and 4 to other points in 1950. Exhibit 47 (R. 818-819; R. 1197-1200) shows similar reports on 16 cars to New York City. The description of the general condition of the first shipment shown on Exhibit 45 is typical:

> "Straw buffing. 7th stack 'B' end shows upper cases overlapping lower cases up to 3 inches in direction of 'A' end. 'A' end 1st stack jammed against bunker wall. Ends of cases pushed in, bottoms wet due to leakage and matted to lower cases. 40 cases externally damaged in this one stack. 269 cases concealed damage. 308 cases contained 9,240 dozen."

The cars shown in these exhibits were shipped by Utah Poultry & Farmers Cooperative, which in 1949 shipped 104 carloads from Utah to eastern destinations, of which only 33 carloads were delivered without damage. In the first half of 1950 it shipped 52 carloads to eastern destinations, of which only 10 were delivered without damage. During the same period it shipped 136 cars to the Pacific Coast area and practically all were delivered in good order (R. 37-38; 284 I. C. C. 398-399).

The record contains no R.P.I.A. reports showing the general condition of individual egg shipments other than those in Exhibits.

Effect of Tolerance Provisions on Claims.

The record discloses that the tolerance rules here involved have the following effects on egg shipment claims:

1. The tolerance provisions purport to operate on the legal liability of the railroads to the interested consignee after the eggs have been deliver d at destination and prob-

ably after they have been eaten by the ultimate consumer. This is obvious from the wording of the rule, "no claims shall be allowed . . .".

2. The tolerance provisions do not give any noticeable effect to the usual legal principles governing the measure of damages, namely, that the railroad is liable for the difference between the value of the shipment at destination in the condition in which it would have arrived if properly handled, and its value in the damaged condition in which it actually arrived. Instead, they purport to impose a portion of the damage loss on the shipper because of the shell characteristics of a small fraction of the eggs shipped which do not detract from the destination value of the shipment if not damaged in transit.

3. They assume that the origin condition of each shipment of non-federally inspected eggs is the same. Actually, the origin condition of no two shipments is the same. See Exhibit 15 (R. 301-302; R. 1283-1284). Thus the regulations penalize the shipper of carefully selected and packed eggs and prefer careless shippers whose eggs contain a higher percentage of stains, checks and loss. Since, even without a tolerance, the consignee suffers some slight loss on each damaged shipment (R. 30; 284 I. C. C. 392), any tolerance would increase that loss and penalize the shipper whose eggs are damaged in transit and prefer the shipper whose eggs arrive at destination in good order.

4. The tolerance rules completely eliminate carrier liability up to the prescribed percentages; and the percentages are based upon stained and cracked eggs as well as "loss", even though stained eggs are salable, albeit at prices somewhat lower than those for sound eggs, whereas leaking and broken eggs represent total loss (R. 25; 284 I. C. C. 388). This results from lumping all such shell conditions under the characterization "physical damage to eggs" as used in the tariff rule (R. 1286B).

5. The principal if not the sole effect of the tolerances is to reduce the carriers' liability and increase the consignees' losses rather than to eliminate claims. This is apparent from pages 5 and 6 of Exhibit 48 (R. 857-858; R. 1206 and 1207) which show application of the 5 percent rule to the 12 damaged cars arriving in New York in January of 1950 to which the 5 percent rule applied; page 7 of Exhibit 49 (R. 858 and 859, R. 1219) showing application of the 5 percent rule to the 37 damaged cars which arrived in New York in August of 1948; and pages 4 to 6 of Exhibit 50 (R. 859-861; R. 1224-1226) which show application of the proposed 4 percent rule to all 106 damaged cars arriving at New York in January, 1949, to which the rule would have applied if effective. The claim on each such car was reduced by application of the tolerance rules, *but not one of the claims was eliminated by application of the 5 percent rule.*

6. Tolerance rules result in substantial reductions of claims. Exhibit 49 (R. 858-859; R. 1212) shows that claims on all 312 "5 percent claim cars at New York" from August, 1948, to June, 1950, were reduced *42.2 percent* by the 5 percent rule. Exhibit 50 (R. 859-861, R. 1221) shows that claims on all 1439 "4 percent claim cars" at New York from January, 1949, to June, 1950, would have been reduced *37.7 percent* by the proposed 4 percent rule. Exhibit 51 (R. 861-862; R. 1228) shows that all 171 "6 percent claim cars" at New York from January, 1949, to June, 1950, would have been reduced *50 percent* by the proposed 6 percent rule.

Basis of the Commission's Approval.

To the extent to which the basis of the Commission's holding is revealed in the report, it will probably be found somewhere in the following excerpts therefrom:

"The physical condition of the eggs at the time they are offered for transportation, rather than specific descriptions, should be the basis of the regulations governing claims incident to such transportation. The proposed regulations are designed to accomplish needed changes in the present regulations based upon evidence obtained during the course of the investigation in the title proceeding.

"Respondents are not attempting by the proposed regulations to limit carrier liability, in that they are directed against losses due to the inherent nature of shell eggs rather than against losses caused by the carriers. These regulations merely establish a means to determine the amount of damage existing at the time the shipment is received by the carrier and the amount of damage resulting solely during transportation because of the inherent nature of the shipment." (R. 18 and 19; 284 I. C. C. 383.)

* * * * *

"Checked eggs are weak in their structure and defective, * * *." (R. 20; 284 I. C. C. 384.)

* * * * *

"Eggs are highly perishable and fragile. A certain amount of damage occurs to them during the grading and packing operations. The principal cause to which shell damage prior to rail transportation is attributable is the fragility of the commodity." (R. 26; 284 I. C. C. 389.)

* * * * *

"The result of these (U. S. Department of Agriculture) inspections indicates an average damage of 3.4 percent at origin and 5.1 percent at destination, and typifies the character of eggs which are loaded into railroad cars at points of origin. It also establishes that there is a normal expectancy of shell damage in every car loaded with eggs, and that it is at least impractical to load a perfect car." (R. 31 and 32; 284 I. C. C. 394.)

* * * * *

"It (the record) does indicate, however, based on the

number and amount of claims, that the inspection of shipments of eggs arriving at New York is being performed with a view to detecting all damaged eggs. Claims in amounts exceeding 50 percent of the revenue on the entire egg traffic to New York in 1947 do not appear to be based on a cursory inspection." (R. 34; 284 I. C. C. 396.)

* * * * *

"The present and proposed regulations are not limitations of the carriers' liability in respect of damage to property transported by them. They constitute merely tariff rules and practices designed to relieve the carriers from paying claims for damages which are not attributable to their negligence but which result from the inherent nature of the commodity transported. Such inherent defects were recognized in No. 10012, wherein division 2 found a tolerance of 5 percent in respect of 'current receipts eggs' not unreasonable or otherwise unlawful. The record herein establishes that there are inherent defects also in eggs other than so-called current receipts." (R. 40; 284 I. C. C. 401.)

* * * * *

"Eggs containing checks, blind or visible, are to a certain extent in a damaged condition. In other words, the shells on those eggs are defective or cracked. These defects or cracks, unlike breaks or fractures in the bones of animate things, do not heal or knit with the passage of time. Any change in the condition of a defect or crack in an eggshell can result only in its enlargement, a healing or knitting thereof not being possible. The slightest movement in transportation may cause additional damage to such eggs. Such damage cannot be imputed to the negligence of the carrier but rather to the inherent nature of the commodity. Even a slight enlargement of the check or defective part could, by a rupture or break in the shell membrane, result in a leaking egg. Such an egg causes additional damage, such as stains, to otherwise sound eggs in the same case.

"On the record in these proceedings, the present

> tolerance of 5 percent in respect of all eggs, other than those described as rehandled and repacked, and storage packed eggs, processed at packing plants or storage warehouses at point of origin of the rail shipment, appears reasonable. The damage to such eggs for which respondents are not responsible averages that amount." (R. 42; 284 I. C. C. 402.)
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>
> "As stated, the present 5-percent tolerance on eggs not processed at the rail point of origin appears reasonable. The record also supports a finding that a tolerance of 3 percent would be reasonable on eggs processed at the rail point of origin." (R. 43; 284 I. C. C. 402.)

The above language does not reveal clearly the course of reasoning which led to the Commission's decision and leaves room for considerable speculation.

The fact that the regulations which were approved provide for the addition of 1 percent to the "shell damage" revealed at origin by governmental certificates (where such certificates exist) (R. 1286B) indicates that of the 3 percent and 5 percent tolerances, respectively, the Commission may have attributed or allocated 1 percent to damage presumed to have occurred in transit and which the Commission believes is attributable solely to fragility of eggs generally (or perhaps of checks only) and which the Commission thinks is an inherent vice or defect for which the carriers would not be liable under established legal principles. The Commission did not so state, though it could easily have explained its reasoning and the facts upon which it relied.

If the Commission attributed 1 percent of the tolerances to damage in transit resulting from an inherent vice or defect, then the Commission must have attributed the remaining 2 percent and 4 percent, respectively, to checked eggs or "shell damage" which normally exists in the sound commercial shipment.

If the above assumptions are correct, it seems probable that the 2 percent figure was obtained from the 1.9 percent checks and 0.1 percent loss found at origin in the 115 car test inspection by the U. S. D. A. (R. 302, 303; R. 1183, 1184), and that the additional 1 percent attributed to damage in transit was based on the increase of 0.8 percent in checks and 0.2 percent in loss which, according to that test, occurred while the 115 cars were in transit (*id.*). The Commission does not so state.

If the above assumptions are correct, then with respect to the 1.9 percent checks at origin, the Commission must have assumed either (1) that the 1.9 percent checks arrive as checks at destination and that each such check is found in the destination inspection and segregated as a check, or (2) that the 1.9 percent checks all become leakers in transit due to their checked shells. But these assumptions are disproved by the record.

It cannot be assumed that origin checks which arrive at destination as checks are found and segregated in the destination inspection. The Commission found:

> "The 1.9 percent checks were, however, found by candling and clicking, and could not be detected by the kind of inspection performed at New York" (R. 31, 284 I. C. C. 393, 394).

Neither does the record justify an assumption that each of the 1.9 percent checks in a case became further cracked or broken in transit and was found and segregated in the destination inspection. This is clear from the following:

1. R. P. I. A. Manager Jensen testified that R. P. I. A. inspections at destination markets show that most of the damage found is to those eggs in the first row of cells of the filler against one end of the case and the center board thereof (R. 879). Obviously checks which found their way into the case through human error would not be concentrated at a particular place in the case.

2. The Commission found that in the reconditioning process eggs are transferred from a damaged case to a good case one whole layer (3 dozen) at a time, and that in replacing smashed and leaking eggs, inspection to the next lower layer in the case is continued until a good layer is found (R. 33; 284 I. C. C. 395). The 1.9 percent origin checks obviously would be distributed throughout the case; and those in the good layers not inspected could not possibly be seen.

3. The Commission carefully avoided a finding that the 1.9 percent origin checks all become broken or are discovered at destination. The Commission said merely that, "The slightest movement in transportation *may* cause additional damage to such eggs," and, "Even a slight enlargement of the check or defective part *could*, by a rupture or break in the shell membrane, result in a leaking egg" (R. 42; 284 I. C. C. 402). The Commission embroidered its report with adjectival characterizations of the supposed fragility of the checked egg. Whether checks become leakers in normal transportation is a simple question of fact easily determined; and generalizations of the type used by the Commission afford no proof. In the 115 car U. S. D. A. test described by the Commission, the fact that the increase of "loss" in transit was only 0.2 percent (R. 31; 284 I. C. C. 393, 394) should afford sufficient answer to the Commission's inference. There is other proof in the record. Cases containing 100 percent checked eggs are shipped by rail from Utah to Los Angeles; and at destination, only about 1 percent are leakers (R. 842, 843).

4. The Commission's inference that checks become leakers in transit constitutes a direct reversal of a simple finding of fact made in a previous case by the Commission. In *National Poultry, Butter & Egg Asso.* v. *N. Y. C. R. R. Co.*, 52 I. C. C. 47, 54, the Commission said:

"It should not be concluded, however, that if on an average 19 cracked eggs are packed in a case for shipment, these may reasonably be expected to develop into broken eggs by the necessary and ordinary shocks of transportation. The testimony in this case as to the experiments with cases containing cracked eggs which were subjected to shocks similar to those received in railroad transportation indicates that cracked eggs resist shocks almost as well as sound eggs. Entire cases of cracked eggs are shipped over the railways with little more damage than sound eggs."

Even if all of the above described assumptions were correct and if the Commission's course of reasoning were subject to some kind of rationalization and not confounded by other findings in the report, or by uncontradicted evidence, the fact would still remain that the ultimate basis for the Commission's action is its assumption that the lawful measure of damages rests upon shell conditions present in every sound commercial lot of eggs wherever shipped, received, bought or sold, which do not detract from the commercial value of the eggs nor result in damage moneywise to the interested shippers or consignees. Even if Section 20(11) of Part I of the Interstate Commerce Act were nonexistent and if the carriers could lawfully publish tariff rules affecting damage claims, the only proper basis for such regulations would not be a technical analysis of minute shell irregularities existing at origins of shipments; but rather, the only proper lawful basis would be the difference in the value of the eggs at destination in the condition in which they would arrive with normal, careful handling and their value in the damaged condition in which they actually arrive; and that the only useful purpose served by analyzing the shell characteristics of a lot of eggs either at origin or destination is to learn whether it meets grade specifications and therefore whether it will sell at the market price for that grade.

The Decision of the Lower Court.

Following the Interstate Commerce Commission's order approving damage tolerance rules for shell eggs (R. 11; 284 I. C. C. 377), an action was commenced in the United States District Court for the District of Utah, Central Division, by Utah Poultry & Farmers Cooperative against the United States of America and the Interstate Commerce Commission for an order asking that the Commission's order be enjoined and set aside and seeking certain other relief. (R. 1). Armour and Company, Swift & Company and the Secretary of Agriculture of the United States intervened as plaintiffs (R. 55, 56, 60, 80, 81 and 82), and one hundred and thirty-one railroads intervened as defendants (R. 91-96). In their answers, the Interstate Commerce Commission and the intervening railroads sought dismissal of the complaint (R. 88, 102), but the United States admitted the allegations of the complaint and asked that the Commission's order be set aside (R. 84).

In its majority opinion, the lower court found for the defendants and dismissed the complaints. The general reasoning of that court was that the restraint imposed upon the carriers and the Commission by Section 20 (11) of the Act is not broad but is in terms narrowly limited by reason of the words "caused by it" as used in the language "full actual loss, damage or injury to such property caused by it" (119 F. Sup. 846, 858); that the Commission heard evidence and found that the regulations "are directed against losses due to the inherent nature of shell eggs rather than against losses caused by the carrier (*id.*, p. 59) * * *" that such finding was one of the kind entrusted by Congress to the Commission (*id.*, p. 858); and that the Commission's findings that the regulations as to tolerance regulations are not limitations of carrier liability but are tariff rules designed to relieve carriers from

all damage claims which are not attributable to their negligence or other fault, involves a question of fact which legally can be decided only by the Commission, and when so decided with substantial support of evidence, will not be disturbed by the courts (*id.*, p. 860).

In the course of its decision the lower court cited and relied upon several Supreme Court decisions recognizing the Commission's expertise in rate making and certain other functions and narrowly defining the scope of judicial review where such functions are performed by the Commission (*id.*, pp. 860-863).

In his dissenting decision, Judge Knous held in effect that fragility of eggs is not an inherent vice and that the tolerance rules limit the liability of the carrier and violate the prohibition of Section 20(11) of the Act (*id.*, p. 867).

SUMMARY OF ARGUMENT.

I.

A. The doctrine of administrative finality does not apply in this case. Each claim for loss or damage to a shipment is essentially a private matter involving the railroad's liability for damage to a single shipment. Loss and damage claims are not within the jurisdiction of the Commission. *Bills of Lading*, 52 I. C. C. 671, 685, and other Commission decisions. The Commission has no power to change the measure of damages by prescribing rules which would have that effect. *Rosser & Fitch* v. *A. C. L. R. R. Co.*, 91 I. C. C. 611, and *Perishable Freight Investigation*, 56 I. C. C. 449.

B. "Liability," the limitation of which is prescribed by section 20(11) of the Interstate Commerce Act, is the well defined liability imposed on carriers by common law. Decisions of this court so hold. *Atlantic C.L.R. Co.* v. *Riverside Mills*, 219 U. S. 186, and other decisions. The legislative history of section 20(11) leaves no doubt that the liability therein imposed is the ordinary common law liability of a common carrier.

C. Under the common law rule a carrier is liable for failure to transport safely goods entrusted to its care unless the loss or damage was due to stated exceptions. *Chesapeake & O. R. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416, 421-2, and other decisions.

D. Where a shipment is damaged in transportation, the common law measure of damages is the difference between the market value of the property at destination had it been received in good condition and its market value there in the condition in which it did arrive. *Gulf C. & S.*

F. R. Co. v. Texas Packing Co., 244 U. S. 31, 37, and other decisions. The cost of labor and material in reconditioning the damaged cases is also a proper item of damages.

E. The tolerance rules produce different results than the established common law rules governing the lawful measure of damages and constitute a limitation of liability under section 20(11) of the Act.

(1) The facts with respect to individual egg claims differ widely. The tolerance rules assume they are identical; and accordingly, on each individual claim, the tolerance rules produce different results than the lawful measures of damages applicable to the particular shipment. The results produced by the tolerance rules are haphazard and illogical.

(2) The only lawful measure of damages is based upon market value at destination. The tolerance rules are based upon "the physical condition of the eggs at the time they are offered for transportation."

(3) The susceptibility of eggs to damage in the course of transportation is not an "inherent vice." Eggs do not break themselves, but can be broken only by application of external force. This type of breakage is not an inherent vice or defect of the kind within the exception to common carrier liability. That exception applies only to such natural or inherent causes as fermentation, depreciation, drying, decaying, spontaneous combustion, or the operation of other natural processes within the egg which cannot be attributed to the carrier in any way. If susceptibility of eggs to damage is an inherent defect, it is of recent origin and exists only in connection with rail shipments to a limited number of eastern destinations.

II.

The Commission's order and report are based on conflicting findings and are not supported by adequate findings or substantial evidence on the record as whole. The Commission's findings cannot stand unless they are supported by substantial findings on the record as a whole. *Universal Camera Corp.* v. *Labor Board*, 340 U. S. 474, and other cases.

A. Evidence on the record as a whole does not support the approval of different tolerances for eggs packed at rail origins than for those packed at places other than rail origins.

B. The Commission's finding that the record indicates that "the inspection of shipments of eggs arriving in New York is being performed with a view to detecting all damaged eggs" is uncertain in meaning and is contradicted by other findings.

C. The Commission's inference that checked eggs become broken in transit is couched in vague language and is contrary to the evidence.

ARGUMENT.

I.

THE TARIFF REGULATIONS INVOLVED IN THIS APPEAL ARE UNLAWFUL AND VOID UNDER SECTION 20 (11) OF PART I OF THE INTERSTATE COMMERCE ACT.

Section 20 (11) of Part I of the Interstate Commerce Act [49 U. S. C. 1952 ed. §20 (11)] provides:

> "That any * * * railroad * * * receiving property for transportation * * * shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any * * * railroad * * * to which such property may be delivered or over whose line or lines such property may pass * * * and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such * * * railroad * * * from the liability hereby imposed; and any such * * * railroad * * * receiving property for transportation * * * or any * * * railroad * * * delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading * * * for the full actual loss, damage, or injury to such property caused by it or by any such * * * railroad * * * to which such property may be delivered or over whose line or lines such property may pass * * * notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which if is sought to be made is hereby declared to be unlawful and void * * *."

The language in the above section emphatically prohibits

any limitation of a railroad's liability for damages to property in transit. The tariff provisions to be measured against the above prohibition are sections 6 and 7 of the regulations in issue. Section 6 reads (R. 53):

> "*Section 6.*—On eggs placed in packages at rail point of origin of shipment, *no claim shall be allowed* where the physical damage to the eggs at destination does not exceed 3% of the contents of the packages containing damaged eggs. Where damage exceeds 3%, claims shall be allowed for all damage in excess of 3%, if investigation develops carrier liability.
>
> *Exception.*—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 2%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 3% specified in this Section." (Emphasis supplied.)

Section 7 is similarly worded except that it applies a 5 percent limitation to claims on eggs placed in packages at points other than the rail point of origin.

For the purpose of phrasing a "limitation of liability" within the meaning of Section 20(11) of the Act, more apt language could scarcely be found than "no claim shall be allowed" as used in the tariff regulations here in issue.

These "no claim shall be allowed" rules are referred to throughout the record as "tolerance" rules, and such designation, though not descriptive, will be used in this argument.

A. The Doctrine of Administrative Finality Does Not Apply in This Case.

As in most appeals from rulings of the Interstate Commerce Commission, the parties who seek to sustain the Commission's action invoked the doctrine of administrative finality in the lower court; and the principal basis of that court's decision seems to be that Congress has entrusted to the Commission determination of the measure of a railroad's liability for damage to a shipment; that questions pertaining to such matters can be decided only by the Commission; and that when the Commission has decided such matters, the courts should keep hands off.

But in this case the Commission strayed outside the fields which Congress committed to its determination, and has undertaken to legislate on a subject as to which it has no power or expertise. Each claim for loss or damage to a shipment is essentially a private matter involving the railroad's liability to an individual shipper for damage to a single shipment. By the time the claim is filed and considered, the transportation agreement has been completely executed and all that remains is a liability to the shipper not different in character from a railroad's obligation to pay for fuel or supplies which it purchases, or its liability for torts committed against non-shippers. When the claim is filed, all of the facts upon which the liability depends are in the past and cannot be changed, and the railroad's liability has been already fixed by established principles of law. A court can decide the amount of the liability by applying the law to the facts in the particular case; but once the transportation is completed by delivery of the shipment, neither the court nor the Commission can alter the amount owed by the railroad to the shipper.

Court decisions lauding Commission expertise and limiting the scope of review have all dealt with matters clearly

entrusted to the Commission by Congress, such as the reasonableness of rates or practices governing transportation, discrimination, public convenience and necessity, control of one common carrier by another, and other matters of a similar character which obviously require legislative determination by skilled experts.

1. Loss and Damage Claims Are Not Within the Jurisdiction of the Interstate Commerce Commission.

In *Bills of Lading*, 52 I. C. C. 671, 685, the Commission said:

> "The liability of common carriers for the loss of, or damage to, shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Interstate Commerce Commission. *Lost or Damaged Freight Replacement*, 43 I. C. C. 257. It can not direct the payment of a loss-and-damage claim, since the failure to pay would not be a violation of the act to regulate commerce. *Larkin Co. v. Erie & Western Transportation Co.*, 24 I. C. C. 645. The Commission is merely the instrument of the law. Its functions are administrative and quasi-judicial. Its authority to prescribe and impose upon carriers the terms and conditions which they shall write into their bills of lading is limited (1) by the common law; that is, the Commission in no event could impose upon the carriers the assumption of any greater liability than the common law imposes upon them; and, (2) by the statutory law, since the Commission's power and authority springs from and is limited by the organic act."

In *Lost or Damaged Freight Replacement*, 43 I. C. C. 257, 258, the Commission said:

> "The liability of common carriers for the loss of or damage to shipments rests upon definite legal principles, and the enforcement of such liability is not within the jurisdiction of the Interstate Commerce Commis-

sion. This liability should be kept separate from the freight charges. *Larkin Co. v. E. & W. Transportation Co.*, 34 I. C. C. 106-108."

In *S. Landau & Company, Incorporated v. Boston & Maine Railroad*, 208 I. C. C. 669-670, the Commission said:

"Claims for loss and damage to shipments are cognizable only in the courts. *Rosser & Fitch v. A. C. L. R. Co.*, 91 I. C. C. 611; *Atwater & Co. v. M. C. R. Co.*, 107 I. C. C. 491; *Rinelli v. N. Y., N. H. & H. R. Co.*, 112 I. C. C. 567; *Dfaké Produce Co. v. F. E. C. Ry. Co.*, 132 I. C. C. 729; *Luffman & Son v. Seaboard A. L. Ry. Co.*, 147 I. C. C. 600."

2. *The Commission Has No Power to Change the Measure of Damages by Prescribing Rules Which Would Have That Effect.*

In *Rosser & Fitch v. A. C. L. R. R. Co.*, 91 I. C. C. 611, the Commission said:

"Complainants are merchants and shippers at Jacksonville, Fla. * * * We are asked to establish reasonable regulations for the settlement of loss and damage claims. C. W. Zaring & Company intervened in behalf of emplainants.

"Defendants moved to dismiss the complaint on the ground that the subject matter is one over which we have no jurisdiction.

"The sections relied upon by complainants do not empower us to prescribe rules and regulations for the settlement of claims arising from loss or damage to shipments in transit. Such claims, and the measure of damages applicable thereto, are cognizable only in the courts. *Buss Co. v. N. Y. C. R. R. Co.*, 45 I. C. C. 161; *National Industrial Traffic League v. A. & R. R. R. Co.*, 61 I. C. C. 120, 125."

In *Perishable Freight Investigation*, 56 I. C. C. 449, the propriety and lawfulness of the following rule was questioned (p. 481):

> "Carriers furnishing protective services as provided herein do not undertake to overcome the natural characteristics of perishable goods nor the inherent tendency of such goods to deteriorate or decay, nor do the carriers assume any liability for loss or damage resulting therefrom."

The Commission, speaking through Commissioner Eastman, said at page 482:

> "For this reason many of the declarations in the tariff which deal with this matter of liability state with approximate accuracy what we believe to be the law. But such declarations can have no controlling effect, for the carrier's liability for loss or damage is determined by the law. Nothing can be added to or subtracted from the law by limitations or definitions stated in tariffs, and this was admitted by counsel for the Director General. There is the constant risk, therefore, if such declarations are included, of misstating the law and misleading the parties to no good purpose."

The Interstate Commerce Commission has no jurisdiction over a single claim for loss or damage which has occurred in the past. Congress could easily have placed such matters within the discretion of the Commission but saw fit not to do so. It would be strange if the Commission, which admittedly has no jurisdiction over a single claim after the damage has occurred, should be able to deprive numerous shippers of property rights in claims which will occur in the future by the simple device of approving a tariff "rule" or "regulation".

Section 1(6) of the Act (49 U. S. C. 1(6)) makes it the railroads' duty "to establish, observe, and enforce * * * just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and

delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property * * * which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property * * *."

Significantly, the last act mentioned in this section in connection with the transportation is "delivery". Once the property is delivered, nothing is left to regulate except liability of one party to the other; and in Sec. 20(11) Congress has rendered null and void any effort by the railroads to limit their loss and damage liability by tariff regulation.

In *Rosser & Fitch v. A. C. L. R. R. Co.*, 91 I. C. C. 611, the complainants asked the Commission to establish reasonable regulations for the settlement of loss and damage claims, and alleged that the carriers were guilty of practicing unreasonable and unjust regulations in their claim departments in violation of section 1(6) of the Act, but the Commission said:

> "The sections relied upon by the complainants do not empower us to prescribe rules and regulations for the settlement of claims arising from loss and damage to shipments in transit. Such claims, and the measure of damages applicable thereto, are cognizable only in the courts."

B. "Liability", the Limitation of Which Is Proscribed by Section 20(11) Is the Well Defined Liability Imposed on Carriers by the Common Law.

1. *Decisions of this Court so hold.*

In *Adams Exp. Co. v. Croninger*, 226 U. S. 491, this Court considered the liability imposed upon common carriers by

the Carmack Amendment (*infra*, Appendix B, p. 67) and said at pages 506 and 507,

> "The liability thus imposed is limited to 'any loss, injury or damage caused by it or a succeeding carrier to whom the property may be delivered;' and plainly implies a liability for some default in its common-law duty as a 'common carrier.'"

The Carmack Amendment was held constitutional and was analyzed and construed at length in *Atlantic C. L. R. Co.* v. *Riverside Mills*, 219 U. S. 186. The following brief excerpts from that decision speak for themselves:

> "The general doctrine accepted by this court, in the absence of legislation, is, that a carrier, unless there be a special contract, is only bound to carry over its own line, and then deliver to a connecting carrier. That such an initial carrier might contract to carry over the whole route was never doubted. It is equally indisputable that if it does so contract, its common-law carrier liability will extend over the entire route. *Ohio & M. R. Co.* v. *McCarthy*, 96 U. S. 258, 266, 24 L. ed. 693, 696; *Ogdensburg & L. C. R. Co.* v. *Pratt*, *supra*; *Northern P. R. Co.* v. *American Trading Co.*, 195 U. S. 439, 49 L. ed. 269, 25 Sup. Ct. Rep. 84; *Muschamp* v. *Lancaster & P. R. Co.*, 8 Mees. & W. 421." (Page 197.)

* * * * * *

> "The English cases beginning with *Muschamp* v. *Lancaster & P. R. Co.*, *supra*, decided in 1841, down to *Bristol & E. R. Co.*, v. *Collins*, 7 H. L. Cas. 194, have consistently held that the mere receipt of property for transportation to a point beyond the line of the receiving carrier, without any qualifying agreement, justified an inference of an agreement for through transportation, and an assumption of full carrier liability by the primary carrier." (Page 197.)

* * * * * *

> "Upon the other hand, many American courts have repudiated the English rule which holds the carrier to a contract for transportation over the whole route, in

the absence of a contract clearly otherwise, and have adopted the rule that unless the carrier specifically agrees to carry over the whole route, its responsibility as a carrier ends with its own line; and that, for the continuance of the shipment, its liability is only that of a forwarder. The conflict has therefore been one as to the evidence from which a contract for through carriage to a place beyond the line of the receiving carrier might be inferred.

"In this conflicting condition of the decisions as to the circumstances from which an agreement for through transportation of property designated to a point beyond the receiving carrier's line might be inferred, Congress, by the act here involved, has declared, in substance, that the act of receiving property for transportation to a point in another state, and beyond the line of the receiving carrier, shall impose on such receiving carrier the obligation of through transportation, with carrier liability throughout." (Page 198.)

"This burdensome situation of the shipping public in reference to interstate shipments over routes including separate lines of carriers was the matter which Congress undertook to regulate." (Page 200.)

"Reduced to the final results, the Congress has said that a receiving carrier, in spite of any stipulation to the contrary, shall be deemed, when it receives property in one state, to be transported to a point in another, involving the use of a connecting carrier for some part of the way, to have adopted such other carrier as its agent, and to incur carrier liability throughout the entire route, *with the right to reimbursement for a loss not due to his own negligence*. The conditions which justified this extension of carrier liability we have already adverted to. The rule of the common law which treated a common carrier as an insurer grew out of a situation which required that kind of security for the protection of the public." (Page 205.)

In *Galveston, H. & S. A. R. Co.* v. *Wallace*, 223 U. S. 481, 491-2, this court said with respect to the initial railroad's liability for loss of a shipment which moved over connecting lines,

> "Under the Carmack amendment, as already construed in the *Riverside Mills* case, wherever the carrier voluntarily accepts goods for shipment to a point on another line, in another state, it is conclusively treated as having made a through contract. It thereby elected to treat the connecting carriers as its agents, for all purposes of transportation and delivery. This case, then, must be treated as though the point of destination was on its own line, and is to be governed by the same rules of pleading, practice, and presumption as would have applied if the shipment had been between stations in different states, but both on the company's railroad. Thus considered, when the holders of the bills of lading proved the goods had not been delivered to the consignee, the presumption arose that they had been lost by reason of the negligence of the carrier or its agents. The burden of proof that the loss resulted from some cause for which the initial carrier was not responsible in law or by contract was then cast upon the carrier. The plaintiffs were not obliged both to prove their case and to disprove the existence of a defense. The carrier and its agents, having received possession of the goods, were charged with the duty of delivering them, or explaining why that had not been done. This must be so, because carriers not only have better means, but often the only means, of making such proof. If the failure to deliver was due to the act of God, the public enemy, or some cause against which it might lawfully contract, it was for the carrier to bring itself within such exception. In the absence of such proof, the plaintiffs were entitled to recover, and the judgment is affirmed." (Pages 491 and 492.)

In *Lehigh Valley R. Co.* v. *John Lysaght, Limited*, 271 F. 906 (C. A. 2; certiorari denied, 256 U. S. 704), the rail-

road defendant argued that the words, "caused by it", were intended to be restrictive, and that Court said at page 910:

> "Congress cannot have intended to reduce the liability of common carriers to that of ordinary bailees for their own negligence only. Happier words than 'caused by it' might have been used, but they fairly cover loss or damage for which the carrier would be liable at common law."

There can be no doubt that the liability imposed by Section 20(11) is ordinary common carrier liability.

2. The legislative history of Section 20(11) leaves no doubt that the liability therein imposed is the ordinary common law liability of a common carrier.

In *Atlantic C. L. R. Co.* v. *Riverside Mills*, *supra*, the court at pages 200 and 201 quoted from the conference committee report on the Carmack Amendment, and held that the Amendment extended the initial carrier's common law liability to shipments damaged on connecting lines.

Since the words "caused by it" used in the Carmack Amendment were carried forward in the Cummins Amendment, there is no reason to believe that any different kind of liability was intended to be imposed therein than in the Carmack Amendment. However, in view of the weight attached to the words "caused by it" by the lower court, there is attached hereto as Appendix C a brief statement of the legislative history of the Cummins Amendment which leaves no doubt that Congress intended by that amendment to impose common law liability.

C. Under the Common Law Rule, a Carrier Is Liable for Failure to Transport Safely Goods Entrusted to Its Care Unless the Loss or Damage Was Due to Stated Exceptions.

The common law rules governing the liability of a common carrier for damage to goods entrusted to its care are ancient and firmly fixed by judicial decision.

In *Chesapeake & O. R. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416, 421-2, 70 L. ed. 659, 661, this Court said:

> "* * *, it is agreed by the respondent that every carrier receiving goods for carriage in good condition, and returning them in bad condition, is conclusively presumed to have been negligent and is liable for the damage resulting from its negligence, unless the injury was caused by the act of God, the public enemy, or the act of the shipper or the nature of the goods themselves; that as the evidence and the verdict of the jury established that the damage was not due to any of these causes, the carrier's negligence was to be conclusively presumed, and no notice of claim was necessary under the provisions of the Cummins Amendment.
>
> "It is sometimes said that the basis of the carrier's liability for loss of goods or for their damage in transit is 'presumed negligence.' *Hall* v. *Nashville & C. R. Co.* 13 Wall. 367, 372, 20 L. ed. 594, 596. But the so-called presumption is not a true presumption, since it cannot be rebutted, and the statement itself is only another way of stating the rule of substantive law that a carrier is liable for a failure to transport safely goods entrusted to its care, unless the loss or damage was due to one of the specified causes. See *Memphis & C. R. Co.* v. *Reeves*, 10 Wall. 176, 189, 19 L. ed. 909, 912; *New York C. R. Co.* v. *Lockwood*, 17 Wall. 357, 376, 21 L. ed. 627, 639, 10 Am. Neg. Cas. 624; *Bank of Kentucky* v. *Adams Exp. Co.*, 93 U. S. 174, 181, 23 L. ed. 872, 875."

Other statements by this court are as follows:

"A common carrier assumes all risks except those caused by the act of God and the public enemy." *Memphis Railroad Co.* v. *Reeves*, 77 U. S. 176, 19 L. ed. 909, 913.

"The common law subjects the common carrier to insurance of the goods carried, except as against the act of God or public enemies." *N. Y. C. R. R. Co.* v. *Lockwood*, 84 U. S. 357, 21 L. ed. 627, 639.

"The duty of a common carrier is to transport and deliver safely. He is made, by law, an insurer against all failure to perform this duty, except such failure as may be caused by the public enemy, or by what is denominated the act of God." *President, etc., Bank of Ky.* v. *Adams Ex. Co.*, 93 U. S. 174, 23 L. ed. 872, 875.

"Common carriers of merchandise, in the absence of any legislative regulation prescribing a different rule, are insurers of the goods and are liable at all events and for every loss or damage, unless it happened by the act of God or the public enemy, or the fault of the shipper, or by some other cause or accident expressly excepted in the bill of lading, and without fault or negligence on the part of the carrier. *The Niagara* v. *Cordes*, 21 How., 23 (62 U. S., XVI., 46)." *Washington and G. R. R. Co.* v. *Varnell*, 98 U. S. 479, 25 L. ed. 233.

A summary of the general principles is set forth in *Joseph Toker Co.* v. *Lehigh Valley R. Co.*, 97 A. 2d 598, 599-600 (Supreme Court of New Jersey, 1953):

"With stated exceptions, the common carrier's liability for the loss of property entrusted to it was absolute at common law. See Holmes, The Common Law 180 (1951); Beale, The Carrier's Liability: Its History, 11 Harv. L. Rev. 158 (1897); 9 Am. Jur. 813 (1937); *Chicago & E. I. R. Co.* v. *Collins Produce Co.*, 249 U. S. 186, 192, 39 S. Ct. 189, 63 L. Ed. 552, 555 (1919). The original exceptions were confined to losses resulting from acts of God or the public enemy but they have now been expanded to certain other losses including those resulting from the inherent nature of

the property or the default of the shipper. See *Commodity Credit Corp.* v. *Norton*, 167 F. 2d 161 (C. C. A. 3, 1948); *Ledoux* v. *Railway Express Agency*, 113 Vt. 480, 35 A. 2d 665 (Sup. Ct. 1944); *Villari* v. *James*, 155 Pa. Super. 155, 38 A. 2d 379 (Super. Ct. 1944); 9 Am. Jur. 847 (1937); 13 C. J. S., Carriers, § 79, p. 152 (1939). Cf. *Kassel Poultry Co.* v. *Penna. R. R. Co.*, 145 A. 316, 7 N. J. Misc. 301, 304 (Sup. Ct. 1929). The burden of establishing strictly that the loss resulted from one of the excepted causes has always been recognized as resting on the carrier. 1 Michie, Carriers 820 (1915); *Galveston H. & S. A. R. Co.* v. *Wallace*, 223 U. S. 481, 492, 32 S. Ct. 205, 56 L. Ed. 516, 523 (1912). And this is clearly as it should be, for complete control and knowledge after the shipment has begun are in the carrier rather than the shipper. See *New Brunswick Steamboat & Canal Transp. Company* v. *Tiers et al.*, 24 N. J. L. 697, 700 (E. & A. 1853); *Schnell* v. *The Steamship Vallescura*, 293 U. S. 296, 304, 55 S. Ct. 194, 79 L. Ed. 373, 377 (1934)."

D. Measure of Damages Is the Difference Between the Market Value of the Property at Destination Had It Been Received in Good Condition and Its Market Value in the Condition in Which It Did Arrive There.

In *Gulf, C. & S. F. R. Co.* v. *Texas Packing Co.*, 244 U. S. 31, 37, a case involving a claim for damages to poultry, this Court said in speaking of the measures of damages:

"* * *, the ordinary measure of damages in cases of this sort is the difference between the market value of the property in the condition in which it should have arrived at the place of destination and its market value in the condition in which, by reason of the fault of the carrier, it did arrive. *New York, L. E. & W. R. Co.* v. *Estill*, 147 U. S. 591, 616, 37 L. ed. 292, 304, 13 Supp. Ct. Rep. 444."

In *Chicago, M. & St. P. R. Co.* v. *McCaull-Dinsmore Co.*,

253 U. S. 97, 100, which was an action against a railroad for loss of grain during transportation, this Court said:

> "The rule of the common law is not an arbitrary fiat, but an embodiment of the plain fact that the actual loss caused by breach of a contract is the loss of what the contractee would have had if the contract had been performed, less the proper deductions, which have been made and are not in question here."

In *Illinois Central Railroad Company* v. *Zucchero*, 221 F. 2d 934, 937 (C. A. 8), a case involving damage to bananas in transportation, the Court said:

> "Where property has been damaged in shipment the general rule for determining the amount of damages is the difference between the market value it would have had had it been transported without damage and its market value in its damaged condition."

Where an egg shipment is damaged in the course of transportation, its value in the damaged condition is problematical since it is not ascertainable until the broken eggs have been separated from the unbroken. In order to accomplish this and also to minimize the damage by salvaging as many salable eggs as possible, it is necessary to substitute sound cases, flats, and fillers soaked with the contents of broken eggs. Labor is necessary in this process, of course; and it is clear that the cost of the labor, necessary materials, and warehousing are proper items of damage in addition to the difference in the market value of the eggs in good condition and in their damaged condition.

Not only in the prior regulations pertaining to egg shipments but also in the rules assailed in this case, the railroads recognize that the cost of labor and materials is a proper element of damages (R. 45, 49, 52, and 54).

E. The Tolerance Rules Produce Different Results Than Established Common Law Rules Governing the Lawful Measure of Damages and Constitute a Limitation of Liability Under Section 20(11).

1. The Facts With Respect to Individual Egg Claims Differ Widely. The Tolerance Rules Assume They Are Identical.

The tolerance rules assume that each car subject to the 3 percent rule contained exactly the same percentage of "physical damage to the eggs" at origin (unless there is a Federal or State grading certificate) and a similar assumption is made by the 5 percent rule. With respect to this feature of the rules, Judge Knous said in his dissent (R. 142, 119 F. Supp. 846):

> "* * * The tariff provides that when damage exceeds five per cent, claims shall be allowed for all damage (in excess of five per cent, if investigation develops carrier liability. In all damage claims a shipper may recover only his loss less the tolerances provided for. Thus, one shipper who sends a carload of eggs containing two per cent checked or cracked eggs, collects the same amount as another shipper who sends a carload of eggs, five per cent of which are checked or cracked, if the contents of both cars are destroyed or damaged as a consequence of the carrier's negligence. A shipper might ship two cases of eggs from the lot, one car having a five per cent damage, the other none. The consignee would accept the undamaged car at full price and the shipper would lose five per cent of the value of the second car. To me it appears inescapable that such results limit the liability of the carrier and violate the prohibition of Section 20(11) of the Act."

Section 20(11) of the Act by its terms applies to damage claims individually. It speaks in the singular. It refers to issuance of "a receipt or bill of lading for property re-

ceived" and liability to "the lawful holder thereof for loss, damage, or injury to such property".

It is a simple fact which every court will recognize immediately that facts in connection with different claims vary widely. The general condition of the load, the position of the damaged cases, the kind of damage inflicted (*e.g.*, whether by shift of lading toward one end of the car, vertical oscillation resulting from car vibration, etc.), the manner in which the particular shipment was reconditioned, and the kind of damage covered by the particular claim, all constitute facts upon the basis of which a court upon inquiry can determine with a reasonable degree of certainty, what damage was inflicted in transportation, and the extent of the money damages necessary to make the shipper whole.

Actually, the tolerance rules are mere mathematical formulae designed to reduce the amount of the shipper's recovery for rail damage to his egg shipment, and they certainly achieve that result. Railroads' Exhibit 49 (R. 858-859; R. 1212) shows that the 5 percent tolerance rule reduced by an average of 42.2 percent the claims on all 312 cars subject to that rule which arrived at New York during a 23 month period.

The haphazard results of applying the rules to actual claims would probably confuse a skilled mathematician. For example, on three cars which arrived at New York in August, 1948, the amounts of the claims as filed, the reductions resulting from application of the 5 percent tolerance, and the percentages of reductions were as follows (R. 858-859; R. 1219):

Car	Claim as Filed	Reduction (5% Rule)	Percent of Reduction
NAD 110	$ 6.78	$ 1.27	18.7%
ART 17108	13.32	4.00	30.0%
FGE 52271	290.05	50.24	17.3%
NWX 2128	443.17	260.58	58.8%
URT 86694	714.70	175.24	24.5%

Greater uniformity of results would have been achieved if the rule had been worded, "no claim shall be allowed for more than 57.8 percent of the amount claimed." This would be no more illogical than the assumption in the tolerance rules that at origin all 3 percent cars are in identical condition and all 5 percent cars are in identical condition (in the absence of grading certificates showing otherwise).

As previously mentioned, each damage claim involves events which have happened wholly in the past and is a private controversy between the railroad and the shipper. Settlement of such disputes is purely judicial and not legislative. In connection with the Commission's functions in this respect, see *Baer Bros. Mercantile Co.* v. *Denver and R. G. R. Co.*, 233 U. S. 479, 486.

In *Chicago, M. & St. P. R. Co.* v. *McCaull-Dinsmore Co.*, 253 U. S. 97, 99-100, the carrier sought to defend a tariff rule which provided "the amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment." The Interstate Commerce Commission in *Shaffer* v. *Chicago, R. I. & P. R. Co.*, 21 I. C. R. 8, 12, had found the clause valid and not forbidden by law. This Court said:

> "We appreciate the convenience of the stipulation in the bill of lading and the arguments urged in its favor. We understand that it does not necessarily

prevent a recovery of the full actual loss, and that if the price of wheat had gone down, the carrier might have had to pay more under this contract than by the common-law rule. But the question is how the contract operates upon this case. In this case it does prevent a recovery of the full actual loss, if it is enforced."

It is quite clear that the tolerance rules here in issue apply not to the facts pertaining to each individual shipment, but rather assume that the facts are identical to those which the Commission finds apply to the average shipment; and the tolerance rules are thus in plain violation of Section 20(11).

2. *The Only Lawful Measure of Damages Is Based Upon Market Value at Destination. The Tolerance Rules Are Based Upon "The Physical Condition of the Eggs at The Time They Are Offered for Transportation."*

The principle is firmly established that in an action against a common carrier for damages to a shipment in transportation, the measure of damages is the difference between the market value of the shipment at destination in the condition in which it should have arrived and its market value there in its damaged condition. See page 46, *et seq., supra.* In *Chicago, M. & St. P. R. Co.,* v. *McCaull-Dinsmore Co., supra*, this Court struck down a tariff rule which sought to substitute origin value for destination value in measuring the damage to the shipper, although there, as here, the Commission had approved the rule.

The tolerance rules here in issue ignore the established measure of damages and impose a limitation based solely on a condition presumed to exist at origin which bears no relation to destination market value.

The shippers testified that buyers at destination do not turn down egg shipments merely because they contain

checks (R. 954, 958, 988 and 1001). That this is true is obvious from the fact that as the Commission found, the sound commercial shipment contains a few checks. Naturally they still have the same checks at destination; and every shipment or lot of eggs bought or sold at every destination is in the same condition. These are the only eggs which are commercially available and the eggs upon which the market prices are based. They are salable at destination at the market price when they arrive without rail damage. As one shipper witness testified without contradiction, "We may deliver a case or a carload of eggs with a certain number of checks under the standard grading but when the railroad damages the eggs and creates a lot of broken eggs, they have necessarily destroyed the entire grade of the eggs offered at origin" (R. 1001). The only notice which the Commission in its report takes of this testimony is its statement, "Certain tolerances have been adopted by the Department of Agriculture, and the egg trade, in grading eggs." Obviously, the significance of this testimony escaped the Commission completely. This is not surprising because operations of the egg industry are outside the Commission's field of expert knowledge. This points up the dangerous consequences which can result from overextension of the doctrine of administrative finality.

The tolerance rules are not based upon destination market value of the goods shipped, and achieve results inconsistent with the well established measure of damages lawfully applicable.

3. Susceptibility of Eggs to Damage in Transit Is Not an "Inherent Vice."

It is of course apparent that the tolerance rules on their face appear to limit the railroads' liability for damages to

shipments in transportation. The Commission in its report seeks to avoid that result by establishing that a portion of the loss suffered by the shipper or consignee whose egg shipment is damaged by a railroad, is due to "the inherent nature of the commodity transported", and is within one of the recognized exceptions to the railroads' normal common carrier liability.

The Commission does not spell out what it considers the vice or defects to be, *i.e.*, the presence of a few checks in every commercially sound shipment of eggs; the fragility or susceptibility to damage of eggs with sound shells; or the damage susceptibility of the checked eggs alone.

If the Commission had in mind eggs with sound shells, then logically the Commission should have excused the railroads from any liability at all on egg claims.

If the Commission based its decision on the premise that only checked eggs are subject to a natural vice then the Commission has undertaken to draw a line, based on the degree of fragility between non-checked eggs and checked eggs. But if the Commission considers checked eggs subject to a natural vice, how does the vice manifest itself? Obviously it could do so in one of only two ways: (1) the checks could arrive at destination as checks, or (2) they could arrive as broken eggs. This raises two questions: (1) how do they actually arrive, and (2) how does their natural vice or condition contribute to the damage suffered by the shipper.

In what condition do checks arrive at destination? When the shipment arrives in good order, the checks arrive as checks.* The shipment sells at the market price for the

* The "loss" in the 115 car U. S. D. A. tests which typify the eggs loaded into cars at origin increased from 0.1 percent at origin to only 0.3 percent at destination (R. 31; 284 I. C. C. 393-4); and that loss at destination is well below the 0.5 percent allowed in the specifications of the Department of Agriculture for consumer grade AA and A eggs (R. 4; 28 I. C. C. 401).

particular grade specifications for which it was packed and no loss is suffered by the shipper.

If the shipment is damaged in transit, the checks either remain checks, or else, they are broken. If they remain checks, they are not segregated at destination, however. The Commission found that, "The 1.9 percent checks were, however, found by candling and clicking, and could not be detected by the kind of inspection performed at New York" (R. 31; 284 I. C. C. 393-4).

On the other hand, if the checks become broken in transportation, so do many non-checked eggs in the same shipments, because the damaged cases at New York contain on the average over 5 percent loss, which greatly exceeds the 1.9 percent origin checks; and from the damaged cases 3.6 percent cracked eggs are also taken. (See pages 17 and 18, *supra.*) Where sufficient force is applied to break and crack non-checked eggs, it is difficult to see why breakage of the checked eggs by the same force should be attributed to the "inherent nature" of the checks.

Whatever the Commission's theory may have been, susceptibility to damage by application of force is not an inherent vice. Eggs do not break themselves. As stated by Judge Knous in his dissent (R. 142):

> "Checked and cracked eggs, when properly handled, can be shipped interstate without further damage and can be sold to consumers. External force must be applied to such eggs, as well as to perfect eggs, before they are damaged to the extent that they become unmarketable or claims made for damage."

There are many court decisions which relieve carriers of liability because of such natural or inherent causes as fermentation, depreciation, drying, decaying, heating merely as result of transportation, spontaneous combustion, effervescence, putrification, or corrosion or rust resulting from the chemical union of the parts of the goods

shipped. 13 C. J. S., Section 79, page 155. But unlike the fermentation of molasses, *Faucher* v. *Wilson*, 68 N. H. 338, 38 A. 1002; disease of strawberries, *Railway Express Agency, Inc.* v. *S. L. Robinson & Company*, 184 Ark. 660, 43 S. W. 2d 543; or decay of lettuce, *Chesapeake and Ohio R. Co.* v. *Timberlake Carrie & Co.*, 147 Va. 304, 137 S. E. 507; the loss resulting from the breakage of eggs in transit does not result from the operation of natural processes within the egg but is brought about by the application of force from without.

To hold that susceptibility to damage by application of an outside force is an inherent defect sufficient to relieve the carrier from liability would ingraft a new and different exception onto the existing common-law rule governing common carrier liability. Practically all commodities are subject to damage by application of outside force. Even iron castings are not immune to breakage.

If the fragility of the eggs is a natural vice, it is one which did not exist in 1941, which does not exist today in truck transportation, and which does not exist today in rail transportation to destinations throughout the country except New York and possibly a few other eastern points.

Appellants submit that the susceptibility of eggs to damage by the application of outside force is not a natural vice or defect sufficient to relieve carriers of their normal common-law liability and that the tolerance rules constitute patent limitations of liability in violation of Section 20(11) of the Act.

II.

THE COMMISSION'S ORDER AND REPORT ARE BASED ON CONFLICTING FINDINGS AND ARE NOT SUPPORTED BY ADEQUATE FINDINGS OR SUBSTANTIAL EVIDENCE ON THE RECORD AS A WHOLE.

It becomes necessary to consider this point only if the court does not strike down the Commission's approval of the tolerance rules as a violation of Section 20(11) of the Act for the reasons set forth in the preceding argument. However, even if the Commission should hold that the tolerance rules do not violate Section 20(11), it is the position of these appellants that the Commission's order and report are based upon conflicting findings and are not supported by adequate findings or substantial evidence on the record as a whole, and accordingly, that the lower court should have set aside the Commission's action.

With respect to sufficiency of evidence the inquiry is, of course, whether on the record as a whole there is substantial evidence to support the Commission's findings. *Universal Camera Corp.* v. *Labor Board*, 340 U. S. 474; *Labor Board* v. *Pittsburgh S. S. Co.*, 340 U. S. 498.

Also applicable here is the principle stated in *Secretary of Agriculture* v. *United States*, 347 U. S. 645, 654:

> "In short, the Commission has not explained its decision 'with the simplicity and clearness through which a halting impression ripens into reasonable certitude. In the end we are left to spell out, to argue, to choose between conflicting inferences. Something more precise is requisite in the quasi-jurisdictional findings of an administrative agency. *Beaumont, S. L. & W. Ry. Co.* v. *United States*, 282 U. S. 74, 86; *Florida* v. *United States*, 282 U. S. 194, 215. We must know what a decision means before the duty becomes ours to say whether it is right or wrong.' *United*

States v. Chicago, M., St. P. & P. R. Co., 294 U. S. 499, 510-511."

A. Evidence on the Record as a Whole Does Not Support the Approval of Different Tolerances for Eggs Packed at Rail Origins Than for Those Packed at Places Other Than Rail Origins.

The record is completely lacking in statistical support for two different tolerances, one based upon eggs packed at a rail origin and the other upon eggs packed at another point and thence trucked to a rail loading point. The Commission found: "The record indicates that in the transportation of eggs by motor truck the amount of shell damage is negligible" (R. 39; 284 I. C. C. 400). The record contains an abundance of uncontroverted testimony supporting this finding (R. 326, 376, 460-465, 569, 769, 776, 804, and 837). Moreover, the actual experience of two shippers was that their claims for loss were no greater on eggs packed at off-rail points than those packed at rail origins (R. 310, 699, 723, and 1006). Origin inspections of 60 cars by the Western Weighing and Inspection Bureau did not reveal any such difference between 44 of the cars which were packed at rail origins and 3 at off-rail points (Ex. 15, R. 1283-4; R. 301, 302, 303-4).

B. The Commission's Finding That the Record Indicates That "The Inspection of Shipments of Eggs Arriving at New York Is Being Performed with a View to Detecting All Damaged Eggs" Is Uncertain in Meaning and Is Contradicted by Other Findings.

Apparently the Commission, by this finding (R. 34; 284 I. C. C. 394), sought to convey the inference that in the destination inspection at New York, the receivers seg-

regate the small percentage of checked eggs which were present in the shipment at origin and collect damages therefor from the railroads even though such checks were in the shipment at origin.

At the outset, it will be observed that the finding is not definite. Saying that the inspection is "with a view" to detecting all damaged eggs is far different from saying that all damaged eggs are so detected.

Apparently the basis for the Commission's statement is solely the fact that "claims in amounts exceeding 50 percent of the revenue on the entire egg traffic to New York in 1947 do not appear to be based on a cursory inspection." (*id.*) Certainly this is no rational basis for finding that all damaged eggs are segregated at New York.

Directly in conflict with the above finding is the Commission's further finding: "The 1.9 percent checks were, however, found by candling and clicking, and could not be detected by the kind of inspection performed at New York" (R. 31; 284 I. C. C. 393-4), and with the further finding:

> "In the repacking or reconditioning process, eggs are transferred from a damaged case to a good case one whole layer (3 dozen) at a time. In replacing the smashed and leaking eggs, inspection to the next lower layer in the case is continued until a good layer is found. If, however, there is only one leaker in the top layer that egg is replaced and the case is put in the good-order pile. In the inspection the lid must be removed completely from the case, no candling lamp is used and the eggs are not clicked. The inspection is merely visual" (R. 33; 284 I. C. C. 395).

The latter finding itself is further flatly in conflict with another finding: "In the inspection at destination, the consignee's representative examines every egg in the cases disclosing damage" (R. 21; 284 I. C. C. 385), which as pointed out in the footnote at page 13, *supra*, is obviously in error.

C. The Commission's Inference That Checked Eggs Become Broken in Transit Is Couched in Vague Language and Is Contrary to the Evidence.

The Commission stated with respect to checks:

> "The slightest movement in transportation *may* cause additional damage to such eggs. * * * Even a slight enlargement of the check or defective egg *could* by a rupture or break in the shell membrane result in a leaking egg" (R. 42; 284 I. C. C. 402).

Things which "may" or "could" happen are speculative and furnish no basis for a valid finding of fact. The question, if it had any materiality, would be "What does happen?" The record furnishes the answer to the latter question. Cases containing 100 percent checked eggs are shipped by rail from Utah to Los Angeles; and at destination, only about 1 percent are leakers (R. 842, 843). Moreover, in the 115 car U. S. D. A. test described by the Commission, the increase in "loss" in transit was only 0.2 percent, leaving no doubt that the 1.9 percent checks at origin arrive as checks at destination.

The Commission's inference is also directly in conflict with and a reversal of the following finding in *National Poultry, Butter & Egg Asso.* v. *N. Y. C. R. R. Co.*, 52 I. C. C. 47, 54:

> "It should not be concluded, however, that if on an average 19 cracked eggs are packed in a case for shipment, these may reasonably be expected to develop into broken eggs by the necessary and ordinary shocks of transportation. The testimony in this case as to the experiments with cases containing cracked eggs which were subjected to shocks similar to those received in railroad transportation indicates that cracked eggs resist shocks almost as well as sound eggs. Entire cases of cracked eggs are shipped over the railways with little more damage than sound eggs."

This is a unique situation. The Commission finds at one time that cracked eggs resist shock almost as well as sound eggs, and finds or infers at another time that exactly the opposite is true. This raises the question whether the Commission was wrong in the earlier case or in the later one. These appellants submit that the record leaves no doubt that the Commission's finding in the *National Poultry, Butter & Egg Asso.* case was correct, and that its inference in the present proceedings is contrary to the evidence on the record as a whole.

CONCLUSION.

For the foregoing reasons, the judgment of the Court below should be reversed with directions to set aside and enjoin the order of the Interstate Commerce Commission.

Respectfully submitted,

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August, 1955.

CERTIFICATE OF SERVICE.

I HEREBY CERTIFY that I have this day served the foregoing document upon all parties of record in this proceeding by depositing a copy thereof in the U. S. post office with first class and air mail postage prepaid, properly addressed to counsel of record for each party at his post office address, in accordance with Rule 33 of this Court's Rules of Practice.

JOHN P. STALEY,
Of Counsel.

August 24, 1955.

APPENDIX A.

Section 20(11) of the Interstate Commerce Act, as Amended, Part I (49 U. S. C. § 20(11)).

SEC. 20. (11). That any common carrier, railroad, or transportation company subject to the provisions of this part receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall

be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared

in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this part to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or

parts thereof specified in the notice: *And provided further*, That for the purposes of this paragraph and of paragraph (12) the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this part provided.

APPENDIX B.

The following are the provisions of the Act of June 29, 1906 (Carmack Amendment), the Act of March 4, 1915 (Cummins Amendment), and the Act of August 9, 1916.

1. Section 7 of the Act of June 29, 1906 (Carmack Amendment), provided as follows:

> "That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.
>
> "That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof" (34 Stat. 595).

2. The Act of March 4, 1915 (Cummins Amendment), amended the first paragraph of the Carmack Amendment so as to read as follows[1]:

> "That any common carrier, railroad, or transporta-

[1] The provisions added by the Cummins Amendment are italicized.

tion company *subject to the provisions of this Act* receiving property for transportation from a point in one State *or Territory or the District of Columbia* to a point in another State, *Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country* shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass *within the United States or within an adjacent foreign country when transported on a through bill of lading*, and no contract, receipt, rule, regulation, *or other limitation of any character whatsoever*, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; *and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to*

the manner or form in which it is sought to be made is hereby declared to be unlawful and void: Provided, however, That if the goods are hidden from view by wrapping, boxes, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules: Provided *further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further, That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: Provided, however, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery"* (*38 Stat. 1197*).

3. The Act of August 9, 1916 amended the first proviso of the Cummins Amendment so as to read as follows:

"*Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter

be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to value, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. 'The term 'ordinary live stock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses'' (39 Stat. 442).

APPENDIX C.

Legislative History of Cummins Amendment.

The precise language at issue in § 20(11) of the Act—imposing liability on a carrier for the full actual loss, damage, or injury to property "caused by it"—was carefully considered by the Congress. The Senate Committee originally proposed that in the event of loss or damage to property, the carrier was liable for the "actual value of such property" (S. 4522, 63d Cong., 2d Sess.). But Senator Cummins proposed the amendment, during the debate on the bill, to insert in lieu of the words "actual value of such property" the words "actual loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass" (51 Cong. Rec. 9620) because "if the property was damaged, not wholly destroyed, the words of the original bill would seem to have implied that the entire value of the property could be recovered; whereas it is the intent that only the actual loss or damage shall be recovered" (51 Cong. Rec. 9620-9621). Thereupon the amendment was agreed to without further discussion (51 Cong. Rec. 9621).

Subsequently, however, the phrase "caused by it" was the subject of exhaustive consideration by the Senate. Senator Pomerene inquired as to whether the language "caused by it" was broad enough to grant the relief which was desired (51 Cong. Rec. 9622). Senator Cummins replied that under this amendment "the carrier would be liable if the damage came through any failure on its part to exercise that degree of care or that caution which the

law imposes upon the common carrier. It was not the purpose, of course, in this amendment, to either enlarge or diminish the care which the common carrier must bestow upon goods committed to its possession, or, in other words, to change its liability as an insurer" (*ibid.*).

Senator Smith, of Georgia, expressed further concern as to the language "caused by it," stating: "I am just a little afraid that this language might change the standard of liability by the common carrier of freight. The liability is that of an insurre, with certain exceptions. A liability might exist for the common carrier although the damage was not caused by the common carrier at all, the common carrier's liability being that of an insurer, subject, as I recall, to five exceptions, the exceptions being when the injury to the freight is caused by the act of God, public enemies, acts of the public authorities, acts of the shipper, and the inherent nature of the goods" (51 Cong. Rec. 9625). Senator Smith inquired of Senator Cummins whether it would not be better to use the term "transported by it" instead of the term "caused by it" so that the "standard of liability might remain that of an insurer" (*ibid*). Senator Cummins agreed fully with the purpose of Senator Smith and explained that the only reason for his use of the phrase "caused by it" in his amendment was because the original Carmack amendment made carriers liable "to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by the common carrier * * * to which such property may be delivered" (51 Cong. Rec. 9625). Consequently, the Senate voted to reconsider the vote whereby the amendment introducing the phrase "caused by it" was agreed to, and Senator Smith then proposed an amendment to substitute "transported" for "caused" (51 Cong. Rec. 9625).

However, the subsequent debate on the proposal to substitute "transported" for "caused" revealed serious diffi-

culties. There was complete agreement that the "common carrier ought to be made liable as an insurer of the goods precisely as it was liable at common law" (51 Cong. Rec. 9625), but fear was expressed that the amendment substituting "transported" for "caused" would "broaden the liability of the carrier beyond the common-law liability, and to make it liable even though the loss might be occasioned by the public enemy or by the act of God" (*ibid.*) In further debate on the bill, it was decided that the original language "caused by it" should be retained because this language, as interpreted by the courts, made carriers liable as insurers for the loss or damage to property occurring while in the possession of the carriers (51 Cong. Rec. 9780). Several judicial decisions were referred to which emphatically held that the provisions of the Carmack amendment "simply enforced the common-law liability of the common carrier; that is, that the words 'caused by it,' used in the act, do not have the effect of in any way limiting the liability of the carrier" (51 Cong. Rec. 9778). For example, Senator Sutherland referred to the holding in *Louisville & N. R. Co.* v. *Warfield and Lee*, 6 Ga. App. 550, 65 S. E. 308, 310, that "[a]ny injury that a common carrier permits to befall the property while in its custody, otherwise than through the act of God of the public enemy, is in a juridic sense caused by it" (51 Cong. Rec. 9778). He also quoted from the opinion in *Adams Express Company* v. *Croninger*, 226 U. S. 491, 506, that the "suggestion that an absolute liability exists for every loss, damage, or injury, from any and every cause, would be to make such a carrier an absolute insurer and liable for unavoidable loss or damage, though due to uncontrollable forces," and that the phrase "caused by it" plainly implies a liability "for some default in its common-law duty as a common carrier." Senator Sutherland explained that under the *Croninger* decision "the words 'caused by it' have a

useful place in the statute. If they were not there, the plain implication of the decision is that the liability of the carrier would be extended beyond the rule of the common law, and that the effect of those words in the statute is to limit the liability of the carrier to that of the common-law" (51 Cong. Rec. 9778).

Senator Sutherland further explained that the danger which would arise from the adoption of the amendment proposed by Senator Smith—to substitute "transported" for "caused"—"would be that we would leave out of the statute these limiting words, which simply declare the common-law liability of the carrier, and extend the liability of the carrier to the cases which were excepted by the common-law; that is, the carrier under that sort of an amendment would be liable for an injury or loss of goods due to the act of God or the act of the public enemy, the seizure of the goods upon process of a court, inherent defects of the goods, and those things which are recognized by the common-law as constituting exceptions to its liability" (*ibid.*).

Senator Sutherland also referred to the holding in *Missouri, Kansas, and Texas Railway* v. *Harriman*, 227 U. S. 657, 672, that the liability imposed by the Carmack Amendment in 1906 "is the liability imposed by the common law upon a common carrier, and may be limited or qualified by special contract with the shipper, provided the limitation or qualification be just and reasonable, and does not exempt from loss or responsibility due to negligence." He further explained that the effect of the proposed bill, which became the Cummins Amendment, "is to continue the provision of law respecting the common-law liability of the carrier, but to remove the condition which now exists in the statute under which the common carrier is permitted to exempt itself from liability by special agreement" (51 Cong. Rec. 9779).

Senator Smith, who proposed the exemption to substitute "transported" for "caused" stated that the term "caused by it" was "perhaps a little unfortunate: that language might have been used which would have prevented any possible doubt that the act intended to continue the common-law liability of the carrier, which is that of insurer, subject to the five limitations that have been stated, beginning with the act of God and the public enemy, which are two of them" (51 Cong. Rec. 9779), but Mr. Smith recognized "that the language had been construed, and that the courts have declined to narrow the liability on account of this language" and with the "view that the language is not intended to carry any narrowing effect as to the liability of the common carrier, but that the liability is to remain that of the insurer subject to the recognized exceptions—beginning, * * * with the act of God and the public enemy—", Mr. Smith withdrew his amendment (*ibid.*). The original amendment proposed by Senator Cummins, including the phrase "caused by it," was thereupon agreed to (51 Cong. Rec. 9780).

Hence the unequivocal legislative history manifests the Congressional purpose to impose on the carriers the strict common law liability irrespective of proof of negligence.

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In the Supreme Court of the United States

October Term 1954

No. ~~171~~ 6

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~172~~ 7

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~202~~ 11

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. ~~203~~ 12

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

MOTION OF THE INTERSTATE COMMERCE COMMISSION TO AFFIRM

EDWARD M. REIDY,
Chief Counsel, Interstate Commerce Commission,
ALLEN CRENSHAW,
Associate Chief Counsel,
Counsel for Appellees, Interstate Commerce Commission.

In the United States District Court for the District of Utah, Central Division

Civil Action No. C8–53

UTAH POULTRY & FARMERS COOPERATIVE, PLAINTIFF
THE SECRETARY OF AGRICULTURE OF THE UNITED STATES, INTERVENING PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

MOTION TO AFFIRM

Pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, appellee, the Interstate Commerce Commission, moves that the judgment of the District Court be affirmed.

This is a direct appeal from a final decree entered May 7, 1954, by a three-judge district court convened pursuant to 28 U. S. C. 2284, 2325, dismissing complaints seeking to set aside a Commission order. The several petitions for appeal, the orders allowing appeal, and citations issued thereunder, all on May 7, 1954, refer to the "final order and decree" of the District Court entered on March 10, 1954, which is the date on which the

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District Court opinion was entered. Under the circumstances it is here understood and accepted that the appeal is from the final decree entered May 7, 1954.

Proceedings here involved were instituted by Division 2 of the Commission on its own motion. This action followed the filing of tariffs by the railroads providing an amendment or substitute for the prior established tariff rules and regulations governing descriptions, marks, inspection, and delivery of eggs, in all territories, and the handling of claims thereunder. The prior rule was established in 1919, pursuant to Commission findings in *National Poultry, Butter & Egg Asso.* v. *N. Y. C. R. Co.*, 52 I. C. C. 47, decided July 21, 1919. That regulation and rule was established to govern settlement of claims for loss of or damage to shell eggs. A special rule limited to Boston, New York, and Philadelphia was cancelled on February 10, 1941, and the general rules, based upon the Commission's findings in the above-entitled proceedings, were made applicable throughout the United States. The complainant to the Commission in the 1919 proceeding was the National Poultry, Butter & Egg Association, an organization with a membership of some 900 persons, firms, or corporations distributed throughout the United States. Exceptions to the Examiners' proposed report in instant proceedings were filed by National Poultry, Butter & Egg Association. The report herein states, 284

I. C. C. 377, 379, that since amending the prior rules, February 10, 1941, they had not been basically changed until June 24, 1948.

The proceeding herein was for the purpose of investigating the reasonableness and lawfulness of special regulations governing inspection and delivery and the handling of claims, in connection with transportation of shell eggs in interstate commerce within the United States, with a view of prescribing rules, regulations, and practices relative to such transportation. The immediate reason for the investigation was the filing of tariff rules and regulations, respecting loss and damage to shell eggs transported by railroads, filed July 24, 1948. The Commission declined to suspend that tariff, but instead instituted the investigation here involved.

Hearings were held July 26, 27, 1949, at Chicago, Ill., December 15, 1949, at Brooklyn, N. Y., February 8, 1950, at Washington, D. C., August 1, 1950, at Los Angeles, Calif., and September 7, 1950, at Chicago, Ill. Appellants herein participated in the hearings and submitted testimony of witnesses and exhibits. The Examiners filed a proposed report April 25, 1951, to which the National Poultry, Butter & Egg Association, and others including appellants herein filed exceptions. The report of the Commission in *Special Regulations, Eggs,* was decided February 4, 1952, 284 I. C. C. 377. During the hearings respondent railroads filed schedules to become effective May

12, 1950, proposing certain changes in the special regulations then being considered. Upon protest the proposed schedules were suspended by order of Division 2, dated May 11, 1950, effective for seven months thereafter under provisions of Section 15 (7) of the Interstate Commerce Act, 49 U. S. C. 15 (7). Respondents voluntarily continued the suspension until April 11, 1952, after the Commission report was entered February 4, 1952. Proceedings in the suspension case were consolidated with, considered, and decided in the report of February 4, 1950.

The Commission report carefully considered the facts contained in the 1,254-page transcript of testimony, the 60 exhibits, and the background of prior consideration of the subject in other proceedings involving rules and regulations governing claims of loss or damage to eggs transported by railroads. The tariff regulations prior to July 24, 1948, the existing regulations under the proceedings, and the proposed regulations, which were suspended, are set forth in full in Appendices A, B, and C of the report. The prior regulations had been in effect generally for almost thirty years before the new regulations became effective in 1948. The proposed tariff regulation of 1950 never became effective, because of Commission suspension and disapproval of its rules, providing 4 percent tolerance on eggs packed at rail points, and 6 percent on eggs packed at other

points. That tariff was cancelled by the order entered under the report of February 4, 1952.

The provisions of those three regulations of particular importance in this proceeding relate to the inherent damage attached to all eggs which exists prior to the transportation or resulted therefrom during the transportation, referred to as "tolerance." It is considered by the carriers, shippers, and others concerned as a damage or loss inherent in eggs and not caused by the transportation. Under prior regulations, Appendix A, Section 6, page 404 of the Commission report, it was provided:

> SECTION 6. In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability.

Under the regulations investigated in this proceeding, Appendix B, Section 6, page 406, of the Commission report, it was provided:

> SECTION 6. In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed

for all damage in excess of five percent (5%) if investigation develops carrier's liability.

Under the proposed regulations, suspended and disapproved by the Commission, Appendix C, Sections 6 and 7, pages 407, 408 of the Commission report, it was provided:

> SECTION 6. On eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 4% of the contents of the packages containing damaged eggs. Where damage exceeds 4%, claims shall be allowed for all damage in excess of 4% if investigation develops carrier liability.
>
> SECTION 7. On eggs placed in packages at points other than the rail point of origin, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 6% of the contents of the packages containing damaged eggs. Where damage exceeds 6% claims shall be allowed in excess of 6%, if investigation develops carrier liability.

Exceptions to each of Sections 6 and 7 provide for acceptance of certificates of Federal or State egg inspections showing damage at point of rail origin, at the amount of damage plus 1 percent, where actual damage shown is other than 3 percent under Section 6, and is other than 5 percent under Section 7. As noted in the Commission report, p. 380, the prior regulations effective July

15, 1919, reflected the findings in *National Poultry, Butter & Egg Assn.* v. *N. Y. C. R. Co., supra.* That finding was to the effect that a tariff rate applied to shipments of "current receipts or rehandled current receipts," providing that claims for broken eggs will not be considered or paid by carriers, where such eggs in any crate or case is not in excess of 5 percent of the contents, was not unreasonable or unlawful.

These rules providing a "tolerance" on claims of damage to eggs transported by railroads have been in effect for more than thirty years without court attack, by direct action or in review of Commission orders of approval, until the action herein was filed January 21, 1953. That prior acceptance of the tolerance rules for all those years is enough to refute the claims of appellants herein, that the proposed and cancelled regulations are, or were an attempt to avoid or limit railroad liability for damage, prohibited by Section 20 (11) of the Interstate Commerce Act, 49 U. S. C. 20 (11). It must be legally correct that if the regulations here proposed in 1950, could be conceived as a limitation upon damage caused by carrier transportation, the same rule of law necessarily applies to the prior thirty-year regulations, which were similar in detail except for difference in amount of tolerance and in the scope and method of application. Acceptance by these appellants of the tolerance provisions in prior regulations, constitutes a very grave con-

cession on their part that the regulations here under attack are not violative of said Section 20(11).

The question raised in the first paragraph of appellants' jurisdictional statement, as to whether or not the opinion of the court below was a "judgment, order, or decree," from which appeal could be taken, has been resolved by the filing of the final decree on May 7, 1954, the date upon which appeal was allowed. Appellee Commission has hereinabove conceded that the appeal has been taken from the final court decree. It is also conceded that the Department of Agriculture and other agencies of government participating in the action below, in opposition to the Commission order, have the right of appeal herein if they so desire. It is submitted that participation of such agencies in opposing this order, as stated in the opinion below "are entitled to no more weight and consideration than are the same claims in the complaint of private parties." This opinion ruling is based upon the opinion statement:

> The Interstate Commerce Commission is vested with the only legal authority to administer the Interstate Commerce Act. It has exclusive authority in this field. Neither the Department of Agriculture, Department of the Army, or the Department of Justice (or all of them) has any authority superior to the Commission to decide for the government the questions raised by this action.

The opinion also held that the Attorney General does not have authority to "confess error" and thereby "to dispose of this action," citing 28 U. S. C. 2323, which provides for intervention of the Commission in such cases, and that "The Attorney General shall not dispose of or discontinue said action or proceeding over the objection of such party or intervenor, who may prosecute, defend, or continue said action or proceeding unaffected by the action or nonaction of the Attorney General therein."

It is beyond question that matters involved in this proceeding relate to application of the Interstate Commerce Act, and that administration of that Act is vested in the Commission by Congress. That provides conclusive authority for the ruling of the court below that only the Commission has legal authority to administer the Interstate Commerce Act. The Commission would be powerless to administer the Act if other Government agencies were permitted to oppose its orders, with the force of Government authority and to the point of overruling the action. The ruling of the court below that claims of departments of government, other than the Commission in dealing with the Interstate Commerce Act, are entitled to no more consideration than claims of private parties, is clearly supported by opinions of the Supreme Court. This was plainly stated in *Interstate Commerce Commission* v. *Jersey*

City et al., 322 U. S. 503, 523. The Attorney General took a neutral position in the District Court, and filed brief, on appeal urging the decree setting aside the Commission order be affirmed. The opinion states:

> * * * *If Congress desires to grant its own agencies greater privileges of judicial review than have been allowed to private parties it is at liberty to do so,* but it is not for the Court to set aside, without legislative command, its slow-wrought general principles which protect the finality and integrity of decisions by administrative tribunals. [Emphasis supplied.]

Three basic questions were here presented to and decided by the Commission. The first was, whether or not there are inherent defects in eggs, other than so-called current receipts. Second, were those inherent defects responsible for damage to eggs at the time of shipment and in transit, in percentages approved by the report of February 4, 1952. And third, was there substantial record evidence to support the subordinate and ultimate findings in the report.

Appellants do not contend that the Commission has no authority to investigate the carrier regulations here involved, or to decide the reasonableness and otherwise lawfulness thereof. They contend only that the decision of the Commission, that shell eggs are subject to inherent damage, not caused by the carriers, in the percentage

amounts stated in the findings, constitutes approval of tariff regulations which limits liability contrary to provisions of Section 20 (11) of the Interstate Commerce Act, 49 U. S. C. 20 (11). That section provides that railroads shall issue bills of lading or receipt for property to be transported, "and shall be liable to the lawful holder thereof for any loss, damage, or injury * * * caused by it or by any common carrier * * * to which such property may be delivered or over whose lines such property may pass * * *."

In the jurisdictional statements, p. 5, it is stated that prior to July 24, 1948, there was no limitation upon railroad liability for damage to shell eggs other than "current receipts," with respect to which the Commission approved a tariff rule, in 1919, limiting carrier liability on shipments of "current receipts" to damage in excess of five percent of the total number of eggs, citing *National Poultry, Butter & Egg Asso. et al. v. N. Y. C. R. Co., supra.* The statement claims the basis for the Commission's 1919 decision was the "assumption that the shippers ordinarily pack into cases of 30 dozen eggs [current receipts] approximately 18 broken or damaged eggs." The Commission report, p. 49, preceded the selected quote, with the statement "What is called the 5 percent rule rests upon" the assumption quoted. That report, pp. 53, 54, referred to Department of Agriculture reports filed in the record, showing

results of a study of conditions under which eggs were shipped in 1913, including the condition of eggs found when prepared for shipment at 12 packing houses. As the reports revealed, upon the basis of sample cases checked, each case contained an average of 19.2 cracked eggs and 11.28 eggs with checks or abnormally thin-shell areas. On the basis of that Department of Agriculture evidence the report held "if it be true that the average case packed for shipment contains 19 cracked eggs before it starts on its railroad journey, allowance for at least that number when delivered to consignee is justified." Upon that evidence the tariff rule applied to shipments of current receipts, that "claims for broken eggs will not be considered or paid by the carrier when the number of broken eggs in any case or crate is not in excess of 5 percent," was found not to be unreasonable or unlawful.

During the some thirty years that tariff remained in force and effect the National Poultry, Butter & Egg Association, the Department of Agriculture, the defense departments of Government, Swift & Company and Armour & Company, never attacked that rule or Commission approval thereof in court or otherwise, as a limitation upon carrier liability for loss or damage of shipments transported. That rule was as certainly based upon the nature of eggs—inherent defects—as are the regulations here in controversy. By use of fragmentary consideration of facts and Commis-

sion reports, appellants apparently seek to reconcile their acceptance of the 1919 tariff rules with their opposition to the rules in the tariffs here involved. All of the legal and logical juggling by appellants will not suffice to convince nonpartisan interests that there is any material difference between the 1919 and 1950 regulations, insofar as the questions of inherent defects and limitation of carrier liability are concerned.

Appellants herein participated in the Commission proceeding and offered testimony of witnesses and exhibits. The opinion below quotes from some of the testimony. On page 9, Witness Hamann, Chief Inspection and Grading Division of the Department of Agriculture, in answering a question of the hearing Commissioner, stated "there is a tolerance in the grading of eggs, * * * because it is not humanly possible to remove from any lot of eggs in the candling or grading process all defective eggs." Testimony of this witness is further quoted, opinion, p. 10, to the effect that he had never seen a perfect car (of eggs), and that there is a normal expectancy of shell damage in every car that is loaded. The opinion, pp. 10, 11, refers to the testimony of Mr. Miller, chief of the research division, poultry branch, Department of Agriculture, as to the results of a test study made at the request of the Interstate Commerce Commission. He stated that farm eggs when delivered to a packer show 5 percent in a checked condition, 4 percent existing before leaving the

farm and 1 percent more in transit to the packer, and in addition 12 percent more with shell damage consisting of stains and dirties. He also stated that after being reworked at the packing plant, at the time of leaving the shipping point the eggs showed 1.9 percent checks, 1.4 percent stains and dirties, a total of 3.3 percent (damaged). This witness submitted exhibit 22, p. 2, showing the result of studies of 737 cars selected at random, showing total defects of 3.9 percent.

The opinion, p. 12, noted other evidence submitted by the railroads, the results of examination of 1,002 origin inspection certificates of the Department of Agriculture, based upon 18,437 cases of eggs examined at the shipping point, showing 3.04 percent of natural eggs (before being dipped in oil) to be checked or stained, and for processed eggs 3.22 percent with same type of damage. A large volume of evidence showing the inherent damage to eggs is in the record herein, only portions of which have been quoted in the opinion. It is not reasonable to quote or refer to more of that evidence herein, since that quoted above not only supports the Commission and Court findings, but proves beyond doubt that shell eggs when shipped have inherent defects and damage not discoverable by normal packing plant processes, and not caused by the carrier. As noted by the opinion, the Commission found, report, p. 403, that tolerances of 3 percent at rail points of origin, and 5 percent at other than the

rail points, would be reasonable. The existing 5 percent tolerance on eggs, other than rehandled and repacked is practically the same regulation which has been applied for some thirty years, and that was found reasonable.

The opinion noted that carrier studies of Department of Agriculture inspection certificates was substantiation of the Department's study made at the request of the Commission. It is not remarkable but only natural that the Commission findings are practically the same percentage, for rail points of origin, as were found by experts of the Department of Agriculture. It is remarkable only that counsel for that department claim herein that no evidence supports the finding as to the 3 and 5 percent tolerance. In practical effect the 5 percent tolerance has been accepted by the Department of Agriculture and shippers generally for so many years as to here make the claim in respect to that tolerance unworthy of serious consideration. The tolerance percentage at rail points of origin had not been previously determined. That is the 3 percent tolerance approved by the Commission largely upon the basis of evidence submitted by Department of Agriculture experts. The jurisdictional statement, p. 15, claims there is no evidence or finding, as to eggs packed at rail origins, that damage found at destination existed prior to transportation by rail. This method by the Department of Agriculture of trying to avoid the force of the testi-

ony of their own experts, without plainly stating disagreement with them, cannot divert attention from the obvious fact that those experts testified as to egg damage appearing in cases ready for shipment at the rail point of origin. It was clearly the purpose of the Commission to establish the inherent damage existing after packing and before shipment. That was the reason for requesting a study by experts of the Department of Agriculture. The findings in the report, pp. 402, 403, fully refute appellant claims as to lack of findings, to such extent as to need no further comment. *Alabama Great Southern R. Co.* v. *United States*, 340 U. S. 216.

The opinion below, p. 14, *et seq.*, gave full consideration to "Experience with Tolerance Rules." Court and Commission cases are there cited, showing application of tolerance rules, similar to those here involved, on natural shrinkage of grain, on moisture evaporation or precipitation on coal, on watermelons, and others, including eggs, as above discussed. Interpretation of Section 20 (11), pp. 16, 17, clearly shows there was no purpose in that statute to make a carrier liable for loss or damage "not caused by it." In support thereof there is quoted, p. 17, a full explanation by the Supreme Court of the meaning of Section 20 (11), taken from *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 503, 506-507. The jurisdictional statement of appellants, p. 12, cites the *Adams Express case* as authority for

the contention that "The majority of the Court in this case misconstrued the phrase 'caused by it' in Sec. 20 (11) * * *." This fairly illustrates the misconception of appellants as well as the inapplicability of judicial authorities cited.

Probably due to inadvertence the jurisdictional statement, p. 12, admits there is an exception to the common law rule as to damage caused by "inherent vice or the nature of the goods," but claims it has no application here. The statement says the exception relates to loss or damage where the carrier is free from negligence and the damage arises solely from "the nature and inherent character of the property, * * *." One must wonder that appellants do not realize that the exception recognized by them is precisely the basis on which Courts and the Commission have approved exemption from liability of a carrier for damage not "caused by it." As the opinion below held, this order of the Commission does not relieve the carriers from damage to eggs caused by them, but only from that "inherent damage" which existed at the time and origin of the shipment.

The Commission has here determined the reasonableness of a tariff regulation filed by the railroads, which seeks to relieve them of the payment of a minor percent of enormous damage claims on shipments of shell eggs. They contend that a relatively minor part of such claims is due to the inherent character of eggs and exists at the time of receiving shipments. The carriers claimed

that damage was 4 to 6 percent. After extensive hearings and long and careful consideration the Commission decided there is in fact existing damage at the time shipments are delivered to carriers, but that the amount thereof is 3 and 4 percent, subject to modification where Federal or State inspection agencies show the amount of actual damage. The application of the tariff is nationwide, and as permitted by the ultimate report finding, has been in effect for some two years.

The opinion below cites and quotes from a number of Supreme Court cases, as authority for the holding that "This is a question of fact relating to the application of the provisions of the Act, which legally can be decided only by the Commission and when so decided with substantial support of record evidence will not be disturbed by the courts." Among the cases there cited are, *I. C. C.* v. *Union Pacific R. R.*, 222 U. S. 541, 547–548; *Mississippi Valley Barge Line Co.* v. *United States*, 292 U. S. 282, 286–287; *Board of Trade of Kansas City* v. *United States*, 314 U. S. 534, 546–548; *Virginia Ry. Co.* v. *United States*, 272 U. S. 658, 665–666; and *New York et al.* v. *United States*, 331 U. S. 284, 328. Without doubt the Commission has here exercised its statutory authority according to standards established by

the cited opinions of the Supreme Court. The opinion below most carefully considered the Commission procedure, the evidence of record, and the report and findings therein. As there held, the findings are within the authority of the Commission, are adequate, and are supported by substantial evidence.

Appellants have contended that the regulation should apply only to localities where exorbitant claims of damages to eggs were filed and collected. They claim it unfair to apply the regulation nationwide, since shippers who do not make exorbitant claims would be subject to the tariff limitation. That contention is fully disposed of by the opinion below, p. 8, where it was stated:

> It is not unjust to apply the regulation nationwide. A shipper whose eggs suffer no damage is not hurt. The tolerance applies only if there is damage. If throughout the nation relatively small claims of damage were made by some shippers it would follow that there would be comparatively small or insignificant reductions under the regulation. And, it is a reasonable assumption from the Commission's exhaustive factual studies that generally some amount of damage was in the crates at the time they were delivered to the carrier.

CONCLUSION

For the foregoing reasons we submit that the decision below is clearly correct, that the Commission order is lawful in every respect, and that this appeal presents no substantial question. The decree of the District Court should accordingly be affirmed.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 171

SECRETARY OF AGRICULTURE OF THE UNITED STATES, *Appellant,*
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 172

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY, *Appellants,*
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 282

SECRETARY OF AGRICULTURE OF THE UNITED STATES, *Appellant,*
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 283

UTAH POULTRY & FARMERS COOPERATIVE, ARMOUR AND COMPANY, AND SWIFT & COMPANY, *Appellants,*
vs.
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

MOTION OF THE INTERVENING RAILROADS TO AFFIRM

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and set aside, or if the said regulations are in all respects lawful that the report and order of the Interstate Commerce Commission should nevertheless be enjoined and set aside on the ground that the Commission's findings of fact and conclusions of law are not supported by adequate findings and substantial evidence.

The Tariff Rules Do Not Limit Railroad Liability

The railroads contended, and the Commission found, that due to the fragile nature of shell eggs there is a substantial amount of damage in shipments of eggs at the time they are offered to the railroads for transportation. The Commission found as a fact what that damage is and the District Court found that the evidence supports the Commission's findings. And further, the District Court points out that the Commission found that "the slightest movement in transportation may cause additional damage to such eggs, which cannot be imputed to carrier negligence, but rather to the inherent nature of the commodity." It is axiomatic that common carriers are not liable for damage to property which exists at the time that property is tendered and received for transportation, and that a common carrier is not liable for damage which results from the inherent nature of the goods. Focused upon this background the problem which confronted the railroads and the Commission was to find a lawful method of removing from a damage claim filed on shell eggs that portion of the damage for which the railroads are not responsible. The method adopted to accomplish this was the publication of regulations in the tariffs providing for tolerances in connection with such damage claims. There is nothing new or novel about this. The Interstate Commerce Commission's report in *National Poultry, Butter & Eggs Assn.* v. *N.Y.C. R.R. Co.*, 52 I.C.C. 47, discloses that tariff tolerance rules in connection with damage claims on shell eggs have been in effect for more than 38 years, and

that the Commission approved such a tolerance rule in the cited case over 35 years ago. Moreover, tolerances for the normal expectancy of shell damage to eggs are used by the United States Department of Agriculture along with the trade in grading eggs, and the Army of the United States when making its inspection of shell eggs grants certain allowances for shell damage. But the appellants contend that such tolerance rules in the railroad tariffs limit the carriers' liability in violation of Section 20(11) of the Interstate Commerce Act, which prohibits limitations of a carrier's liability for damage "caused by it." Both the Commission and the District Court point out that the regulations do not seek to avoid liability for loss caused by the carriers, but rather that they are directed to damage for which the carriers are not responsible, and, therefore, do not conflict with the prohibitions of the Act.

It is urged by the appellants that damage to shell eggs is not caused by the "inherent vice or nature" of the eggs as those terms have been established by the common law, but rather that the damage is caused by the railroads. The fragile nature of eggs is proven by the record before the Commission as is their susceptibility to damage. It was unequivocally stated by the appellants themselves that it is impossible to handle shell eggs without some damage. In order for the damage to be that resulting from an inherent defect, it is not necessary that the damage would equally have occurred if the goods had not been carried at all. This principle is set forth in *Lister* v. *Lancashire & Yorkshire Railroad Co.*, 1 K.B. Div. 878. In the cited case the Railway Company contracted as a common carrier to carry for Lister an engine from his yards to a neighboring town on the railway. The engine was on wheels and fitted with shafts to allow its being drawn by horses. While the Railway Company was drawing the engine with its horses to the railway station, one of the shafts, owing to its being rotten, broke.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Civil Action No. C 8-53

UTAH POULTRY & FARMERS COOPERATIVE, ET AL., PLAINTIFFS

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, DEFENDANTS

MOTION OF RAILROADS, INTERVENING DEFENDANTS, TO AFFIRM

The intervening railroad defendants, appellees, pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, respectfully move that the judgment of the District Court be affirmed on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

This motion is addressed to both the separate appeal by the Secretary of Agriculture of the United States and the joint appeal by Utah Poultry & Farmers Cooperative, the plaintiff, and Armour and Company and Swift & Company, intervening plaintiffs in the above entitled action. These appeals were allowed May 7, 1954, and were served upon the intervening railroad defendants on May 12, 1954. They are direct appeals from the decision, described by the appellants as a "final judgment" and as a "final order and

decree" dated March 10, 1954, by a specially constituted District Court of three Judges, convened pursuant to 28 U.S.C., Sections 2284 and 2325. That decision denied the prayer of the plaintiffs that an order of the Interstate Commerce Commission be annulled and set aside and that the Commission be directed to strike from its files the tariff filed by the railroads containing provisions in conformity with the Commission's findings. The opinion of the District Court is not yet reported. The order of the Commission is dated February 4, 1952, in I.C.C. Docket No. 30030, which incorporated its report of the same date (284 I.C.C. 377). Final judgment was entered on May 7, 1954.

Resume of the Proceedings

This litigation had its genesis in an investigation inaugurated by the Interstate Commerce Commission on its own motion which was prompted by the phenomenal increase in claims for damage to shell eggs transported by the railroads. Throughout the country they increased from about $110,000. in 1941 to an all time peak of $2,338,442. in 1947. Claim payments in the latter year were relatively greater for damage to shell eggs than to any other commodity. In that portion of the United States north of the Ohio and Potomac Rivers, between the eastern seaboard and the Mississippi River, the claim payments on shell eggs in 1947 were 38.41 percent of the aggregate railroad revenue on this traffic and amounted to $1,444,453. Throughout the entire country during that year the loss and damage claims per car per $100. gross revenue on shipments of shell eggs amounted to $21.20. Claims were filed on 58.6 percent of all carloads of shell eggs delivered at New York, Philadelphia, Baltimore and Boston during 1947. Such claims filed on shipments delivered at New York during that year

amounted to 59.5 percent of the total revenue received on the shell egg traffic to that city.

The railroads contended that due to the fragility of shell eggs there is a normal expectancy of shell damage which exists at the time the eggs are delivered to and received by the railroads for transportation, also that due to the pre-existing shell damage and the inherently fragile nature of shell eggs, rather than to any railroad fault, there is a normal expectancy of damage which occurs during the course of transportation. The railroads submitted that there should be a provision in the tariffs relieving them from this normal expectancy of shell damage for which they are in no way responsible. Tolerance rules in connection with damage claims arising out of the transportation of certain grades of shell eggs by rail had been in effect for more than 37 years, and with the approval of the Commission for more than 34 years without challenge in the courts. All that was contemplated was the establishment of additional tariff provisions to cover all grades of shell eggs.

It is humanly impossible to handle shell eggs without some breakage. Unequivocal and emphatic statements to this effect were made by the witnesses appearing for appellant Secretary of Agriculture of the United States. Excerpts from their testimony are set forth at length in the opinion of the court below. It is sufficient here to direct attention to the following which appears at page 263 of the transcript of the testimony before the Commission presented by the Chief of the Dairy & Poultry Inspection & Grading Bureau, Production & Marketing Bureau, United States Department of Agriculture:

> "Q. You pointed out it was humanly impossible, or at least impractical, to pack a perfect car. You have never seen a perfect car, have you?

"A. No, sir, I haven't.

"Q. Then there is a normal expectancy of shell damage in every car that is loaded, is there not?

"A. Yes, sir."

The Commission found that "eggs are highly perishable and fragile," that "a certain amount of damage occurs to them during the grading and packing operations," and that "the principal cause to which shell damage prior to rail transportation is attributable is the fragility of the commodity." (284 I.C.C. page 389).

With respect to damage occurring during transportation, the following pertinent remarks of the Commission appear at page 402 of its report:

> "Eggs containing checks [shells cracked but membrane unbroken], blind or visible, are to a certain extent in a damaged condition. In other words, the shells on those eggs are defective or cracked. These defects or cracks, unlike breaks or fractures in the bones of animate things, do not heal or knit with the passage of time. Any change in the condition of a defect or crack in an eggshell can result only in its enlargement, a healing or knitting thereof not being possible. *The slightest movement in transportation may cause additional damage to such eggs. Such damage cannot be imputed to the negligence of the carrier but rather to the inherent nature of the commodity.* Even a slight enlargement of the check or defective part could, by a rupture or break in the shell membrane, result in a leaking egg. Such an egg causes additional damage, such as stains, to otherwise sound eggs in the same case." (Italics inserted).

The evidence of record as to the amounts of damaged eggs in consignments at the time they are loaded at point of origin, as well as upon arrival at destination, is epitomized from the evidence of record in the Commission's findings of fact which appear at pages 393-394 of the decision.

The studies, as the Commission's report shows, included carloads of eggs loaded at origin points throughout the entire country. The figures in these findings more than support the tolerances found reasonable by the Commission.

The Commission in its report agreed with the railroads. It held that it would be reasonable to have provisions in the tariffs providing that on eggs placed in packages at rail point of origin no claim shall be allowed where the physical damage to the eggs at destination does not exceed 3 percent of the contents of the packages containing damaged eggs; that on eggs placed in packages at other than rail point of origin no claim shall be allowed where the damage does not exceed 5 percent; and that where damage exceeds 3 and 5 percent, respectively, claims shall be allowed in excess of those percentages, if investigation develops carrier liability. These tolerances do not apply wherever a shipper furnishes a federal or state inspection agency certificate showing point of origin damage to be other than 3 and 5 percent, respectively. In such cases the percentage of actual damage as shown on such certificates, plus 1 percent to cover damage in transit due to the inherent nature of shell eggs, shall be used.

The railroads thereafter published a tariff which is still in effect containing the provisions which the Commission found to be reasonable. After the effective date of this tariff, the appellants filed the present proceedings to set the tariff aside.

The basic question presented is whether the order of the Commission is lawful. The appellants contend that the tariff regulations limit liability for damage caused by the railroads, in violation of Section 20 (11) [1] of the Interstate Commerce Act, and that the order of the Interstate Commerce Commission approving them should be enjoined.

[1] 49 U.S.C.

The horses took fright and upset the engine, which was damaged. The defective condition of the shaft was not known by either the plaintiff or defendant or could not have been discovered by an ordinary examination. The county court judge was of the opinion that the Railway Company was liable and that the rule, that a common carrier is excused from liability for damage if it be caused by the inherent vice of the thing carried, is limited to cases in which the inherent vice itself directly causes the damage without any contributory act done by the carrier as in the case of a vicious animal injuring itself or overripe fruit being damaged by the pressure of its own weight. The appellate court, however, ruled to the contrary stating:

> "The county court judge, in thinking that the rule as to non-liability of a common carrier for damage caused by an inherent defect in the thing carried was limited to cases in which the damage would equally have occurred if the thing had not been carried at all, in my opinion went too far. When once you arrive at the fact that the thing is being carried in the ordinary way, and every precaution has been taken consistent with that mode of carriage, and the accident happens from the unfitness of the thing for that mode of carriage, the carrier is not responsible."

Section 20(11) was originally enacted in 1906. After amendment in 1915, it was interpreted by the Interstate Commerce Commission in *The Cummins Amendment*, 33 I.C.C. 682. In that report the Commission stated:

> "It seems clear that these provisions are, in common with the other matters governed by the amendment, confined to instances of loss, damage, or injury caused by the carriers.
>
> * * * * * * *
>
> "In the interest of thorough understandings and to avoid controversies it is very desirable that these rules

be uniform for all the carriers of the country.'" (691-692)

It also stated:

> "A carrier, after the Cummins amendment goes into effect, may not contract to limit its liability for loss or damage caused by it to the property. There is, however, no inhibition as to the limitation of the liability of a carrier for losses not caused by it or a succeeding carrier to which the property may be delivered. The amendment has expressly reapplied the limitation of the prior act with respect to loss or damage caused by the carriers chargeable therewith. It follows, therefore, that the interpretation applied to the act before it was amended is equally applicable to the amendment in so far as the latter affects the right of a carrier to establish rates conditional upon the shipper's assumption of the entire risk of loss attributable to causes beyond the carrier's control. From this it follows that under the amendment a contract or a tariff may lawfully limit to a reasonable maximum the liability of a carrier for losses which it does not cause." (695).

In *Adams Express Co. v. Croninger*, 226 U. S. 491, this court interpreting the statute in part said:

> "What is the liability imposed upon the carrier? It is a liability to any holder of the bill of lading which the primary carrier is required to issue 'for any loss, damage or injury to such property caused by it,' or by any connecting carrier to whom the goods are delivered. The suggestion that an absolute liability exists for every loss, damage or injury, from any and every cause, would be to make such a carrier an absolute insurer and liable for unavoidable loss or damage though due to uncontrollable forces. That this was the intent of Congress is not conceivable. To give such emphasis to the words, 'any loss or damage,' would be to ignore the qualifying words 'caused by it.' *The liability thus imposed is limited to 'any loss, injury or damage caused by it or*

a succeeding carrier to whom the property may be delivered,' and plainly implies a liability for some default in its common law duty as a common carrier." (506-507) (Italics inserted)

The tolerance rules here under discussion do not limit railroad liability. The decisions in this proceeding by the Interstate Commerce Commission and the District Court to the effect that they are not limitations of liability within the meaning of Section 20(11), are in complete harmony with the long standing construction and interpretation of that section by the Commission and this Court.

The Commission's Order Is Lawful and Is In Fulfillment of Its Statutory Duty

The Interstate Commerce Act, as amended, unquestionably gives the Commission authority to do what it has done. The congressional delegation of authority to the Commission is couched in the broadest terms. Restraints upon its authority, such as those imposed by Section 20(11), are couched in narrow terms. Section 1(6) thereof makes it the duty of common carriers to establish just and reasonable regulations and practices relating to or connected with the receiving, handling, transporting, storage and delivery of property. Section 2 prohibits unjust discrimination. Section 3 prohibits undue preferences. Section 13(2) gives the Commission authority to investigate questions arising under the Act. Section 15(1) authorizes the Commission, after investigation, to prescribe what shall be the just, fair and reasonable regulations and practices. One of the purposes for the creation of the Interstate Commerce Commission was to establish uniformity in connection with transportation so far as it is possible to do so—*New Haven R.R.* v. *Interstate Commerce Commission*, 200 U. S. 361, 391. The tariff regulations under scrutiny here aid in establishing

that uniformity. Thus, in speaking with respect to tariff tolerance rules in connection with shipments of grain, the Interstate Commerce Commission said in *Crouch Grain Co. v. A. T. & S. F. Ry. Co.*, 41 I.C.C. 717, at page 719:

> "While the carriers' liability for losses must be determined, not by the Commission, but by the courts, yet to insure uniformity and to avoid unjust discrimination rules or practices of the kind here under discussion should be shown in the tariffs lawfully filed by the carriers engaged in interstate transportation."

Section 20(11) must be read in conjunction with the other provisions of the Act. It should be so interpreted as to prevent involuntary rebates, discriminations, and other practices which the Act was intended to remedy.

The question actually presented by the present proceedings is whether the tariff regulations are just and reasonable. As the District Court said: "To determine the reasonableness of such a regulation requires the experience and knowledge of transportation conditions possessed by the Commission," and "this is the kind of a question Congress intended the Commission to have the authority to determine." Based upon the voluminous record before it, the Commission passed upon the tariff regulations and determined those which would be just and reasonable. As this Court has held on numerous occasions, whether a tariff rule or regulation is just and reasonable is a question of fact which legally can be decided only by the Commission and, when so decided with substantial support of evidence, will not be disturbed by the courts.

The Commission's Conclusions Are Based Upon Adequate Findings Predicated Upon Substantial Evidence

There is clearly no substance to appellants' contention that the Commission's report and order are not adequately supported by findings and by substantial evidence.

The proceeding before the Commission was the subject of five hearings—two at Chicago, Ill., one at Brooklyn, N. Y., one at Los Angeles, Cal., and one at Washington, D. C. The record consists of 1254[2] typewritten pages of testimony and 60 exhibits, many of them voluminous. Studies covering thousands of cars introduced by witnesses for the Department of Agriculture, on the one hand, and the railroads, on the other, proving conclusively the existence of shell damage at the time shipments of eggs are received for transportation, and during their transportation by rail, due to the inherently fragile nature of eggs, are summarized in detail in the Commission's report—see the Commission's report 284 I. C. C. at pages 393 and 394; also the record before the Commission at pages 105, 287, 296 and 449.

The appellant Secretary of Agriculture contends that in as much as the regulations have national effect, there is a basic defect in the report and order of the Commission because of the attention paid to the damage claims in connection with shipments to eastern destinations. There is no substance in such a contention. The established fact is that damage exists in shipments of eggs offered for rail transportation regardless of the intended destination; that the condition of a damaged egg never gets better, but always gets worse with handling; that there is a worsening during transportation of the condition of the eggs which were in a damaged condition at the time they were received by the railroads, and that those eggs cause damage to others which had been sound. The important consideration is the need for a just, reasonable, non-discriminatory and non-preferential rule for uniform application throughout the United States.

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[2] There was a duplication in the numbering of the transcripts of the testimony taken at Washington on February 8, 1950, and Los Angeles on August 1, 1950.

It is respectfully submitted that the Commission's report sets forth detailed findings of fact, but as this court stated in *Alabama G. S. R. Co. v. United States*, 340 U. S. 216, Section 14(1), of the Interstate Commerce Act does not require the Commission to make detailed findings of fact except in a case where damages are awarded. That exception is not present here.

Hanna Furnace Corp. v. United States, 53 F. Supp. 341, (affirmed 323 U. S. 667) reviews in detail decisions of this Court relating to the question of evidence support required for Commission orders.

The weight to be accorded that evidence is beyond the province of the courts—*Virginian Railway Co. v. United States*, 272 U. S. 658.

Reviewed in the light of the principles established by the courts, it must be concluded that this contention by the appellants is without substance.

Conclusion

The law is clear and well settled that the liability imposed by Section 20(11) of the Interstate Commerce Act is not absolute, but limited. The liability there imposed plainly implies a liability only for defaults in the common law duty of carriers.

The law is equally clear and well settled that the courts will not annul and set aside orders made by the Interstate Commerce Commission in accordance with the statute, upon due process, and with findings substantially supported by the evidence.

Since it is evident that the appeals herein do not present questions which are novel or substantial, it is respectfully submitted that the judgment of the District Court should be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 6

Secretary of Agriculture of the United States, Appellant,

v.

United States of America, Interstate Commerce Commission, Et Al.

No. 7

Utah Poultry & Farmers Cooperative, Armour and Company, and Swift & Company, Appellants,

v.

United States of America, Interstate Commerce Commission, Et Al.

No. 11

Secretary of Agriculture of the United States, Appellant,

v.

United States of America, Interstate Commerce Commission, Et Al.

No. 12

Utah Poultry & Farmers Cooperative, Armour and Company, and Swift & Company, Appellants,

v.

United States of America, Interstate Commerce Commission, Et Al.

On Appeal from the United States District Court for the District of Utah

BRIEF FOR INTERVENING RAILROADS, APPELLEES

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IN THE

Supreme Court of the United States

OCTOBER TERM 1955

No. 6.

Secretary of Agriculture of the United States, Appellant,

v.

United States of America, Interstate Commerce Commission, Et Al.

No. 7.

Utah Poultry & Farmers Cooperative, Armour and Company, and Swift & Company, Appellants,

v.

United States of America, Interstate Commerce Commission, Et Al.

No. 11.

Secretary of Agriculture of the United States, Appellant,

v.

United States of America, Interstate Commerce Commission, Et Al.

No. 12.

Utah Poultry & Farmers Cooperative, Armour and Company, and Swift & Company, Appellants,

v.

United States of America, Interstate Commerce Commission, Et Al.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH.

BRIEF OF INTERVENING RAILROADS, APPELLEES.

OPINIONS BELOW.

The opinions in the District Court (R. 105-144) are reported as *Utah Poultry & Farmers Cooperative v. United States*, 119 F. Supp. 846. The majority opinion upholds a decision of the Interstate Commerce Commission (R. 11-52) which is reported as *Special Regulations, Eggs*, 284 I. C. C. 377.

JURISDICTION.

The opinion of the District Court dismissing this suit to set aside the order of the Interstate Commerce Commission is dated March 10, 1955 (R. 105, 148). Separate appeals (1) by the Secretary of Agriculture of the United States and (2) by Utah Poultry & Farmers Cooperative, Armour and Company, and Swift & Company were filed on May 7, 1954 (R. 150, 154). All were allowed on May 7, 1954 (R. 150-151, 155).

The final judgment of the District Court was entered on May 7, 1954 (R. 149). Separate appeals (1) by the Secretary of Agriculture of the United States, and (2) by Utah Poultry & Farmers Cooperative, Armour and Company, and Swift & Company were filed on June 8, 1954, and June 30, 1954 (R. 159, 163-164). They were allowed respectively on June 8 and June 30, 1954 (R. 160, 164-165).

Motions to affirm were filed by the Interstate Commerce Commission and by the intervening railroads in all appeals. Probable jurisdiction was noted on October 14, 1954, and all appeals were consolidated for argument (R. 1288).

Jurisdiction of the appeals is invoked under 28 U. S. C., Secs. 1253 and 2101(b).

QUESTIONS PRESENTED.

The Interstate Commerce Commission, after extended investigation and hearing in which it was established that it is humanly impossible to handle shell eggs without some breakage, approved the inclusion in the railroads' tariffs of provisions providing that no claims for damage to shell eggs shall be allowed where the damage does not exceed certain designated percentages, that where the damage exceeds those percentages claims shall be allowed in excess of those percentages if investigation develops carrier liability, but further providing that these designated percentages shall not apply whenever a shipper furnishes a federal or state egg inspection agency certificate showing the damage to be otherwise than the designated percentages, in which case the percentage of actual damage as shown on such certificate, plus one percent to cover damage in transit due to the inherent nature of shell eggs, shall be used. The questions presented are:

1. Whether the tariff provisions are just and reasonable regulations, within the administrative discretion of the Commission, to protect the railroads from being held liable for damage to shell eggs not caused by them, or limitations of liability which are prohibited by Section 20(11) of the Interstate Commerce Act.

2. Whether the Commission's order is supported by adequate findings and substantial evidence.

STATUTE INVOLVED.

The statute involved in the Interstate Commerce Act, Title 49 U. S. C. and particularly Secs. 1(6), 6(1), 13(2), 15(1), and 20(11) thereof. The text of these provisions is set out in Appendix A of this brief.

STATEMENT.

A. The Proceedings Before the Interstate Commerce Commission.

The Interstate Commerce Commission, by order dated July 23, 1948, upon its own motion, instituted an investigation into and concerning the reasonableness and otherwise lawfulness of the special regulations covering descriptions, marks, inspection and delivery, and the handling of claims thereunder, in connection with the transportation, in interstate or foreign commerce, of shell eggs from, to, and between points in the United States, with a view to making findings and prescribing reasonable rules, regulations, and practices relative to such transportation (R. 12). The Commission gave the investigation its Docket No. 30030 and entitled it *Special Regulations, Eggs* (R. 11).

The Commission held five hearings. During the course of the hearings the railroads published schedules containing new regulations but the Commission suspended their operation in its Investigation and Suspension Docket No. 5792 entitled *Damaged Tolerance on Shell Eggs.* That docket was heard and decided on a joint record with Docket No. 30030.

The dispute before the Commission centered around the railroads' contention that due to the fragility of shell eggs there is a normal expectancy of shell damage which exists at the time the eggs are delivered to and received by the railroads for transportation, and also that due to pre-existing shell damage and the inherently fragile nature of shell eggs, rather than to any railroad fault, there is a normal expectancy of damage which occurs during the course of transportation. The railroads submitted that there should be a provision in the tariffs relieving them from this normal expectancy of shell damage for which they are in no way responsible but which is due to the inherent nature of the commodity itself.

On February 4, 1952, the Commission handed down its decision which is reported as *Special Regulations, Eggs*, 284 I. C. C. 377 (R. 11-52). The Commission agreed with the railroads. It held that it would be reasonable to have provisions in the tariffs providing that on eggs placed in packages at rail point of origin no claim shall be allowed where the physical damage to the eggs at destination does not exceed 3 percent of the contents of the packages containing damaged eggs; that on eggs placed in packages at other than rail point of origin no claim shall be allowed where the damage does not exceed 5 percent; and that where damage exceeds 3 and 5 percent, respectively, claims shall be allowed in excess of those percentages, if investigation develops carrier liability. These tolerances do not apply wherever a shipper furnishes a federal or state inspection agency certificate showing point of origin shell damage to be other than 3 and 5 percent, respectively. In such cases the percentage of actual damage as shown on such certificates, plus 1 percent, to cover damage in transit due to the inherent nature of shell eggs, shall be used.

New schedules publishing regulations in conformity with the Commission's decision became effective May 2, 1952, after demands for their suspension had been denied by the Commission. A copy of the tariff setting forth the regulations (particularly Items 14586-A and 14587-A) appears in the record (R. 1286, A to C). For ready reference the regulations will be found in Appendix B of this brief. The effective date of this tariff is shown as April 18, 1952. Actually the regulations went into effect on May 2, 1952. The postponement was to give the Commission time to consider petitions for review which had been filed with it, and which it denied.

B. The Cause of the Commission's Investigation.

The Commission was led to inaugurate and to conduct its investigation *on its own motion* by reason of the tre-

mendous increase in claims for damage to shell eggs in recent years. Claims throughout the entire country increased from approximately $110,000 in 1941 to an all-time peak of $2,338,462 in 1947. Claim payments in the latter year were relatively greater for damage to eggs than to any other commodity. The shell egg carload traffic originated in 1947 was only 0.072 percent of all carload traffic, while the claim payments for damage to eggs constituted 1.91 percent of all claim payments (R. 38).

The claim payments on eggs in official territory (generally speaking, that portion of the United States north of the Ohio and Potomac Rivers from the eastern seaboard to the Mississippi River) were 2.32 percent in 1941, 7.02 percent in 1943, 16.16 percent in 1945 and 38.41 percent in 1947, of the aggregate revenue on this traffic. In the latter year the total claim payments in official territory amounted to $1,444,453 (R. 38).

The loss and damage per car and per $100 gross revenue on shipments of shell eggs, as compared with other commodities throughout the entire country in 1947 was as follows (R. 25):

Commodity	Loss and Damage	
	Per Car	Per $100 Revenue
Shell eggs	$83.72	$21.20
Melons	52.80	15.11
Sewer pipe, et cetera	19.57	13.16
Crockery and earthenware	29.20	9.10
Furniture (new)	10.23	4.38
Grain	3.45	1.42
Meats, fresh and cured	3.41	1.13
Plumbers' goods	14.06	4.35

Claims were filed on 58.6 percent of all carloads of shell eggs delivered at New York, Philadelphia, Baltimore and Boston during 1947. The percentage that such claims

were of the total revenue received on the shell egg traffic to those cities during the year mentioned was as follows:

New York	50.3
Philadelphia	11.7
Baltimore	15.8
Boston	12.2
Total	41.7 (R. 23).

C. The History of the Tariff Rules and Regulations.

Prior to July 24, 1948, the rules and regulations with respect to the handling of claims on shell eggs were those which became effective July 15, 1919, pursuant to the findings of the Interstate Commerce Commission in *National Poultry, Butter & Egg Asso.* v. *N. Y. C. R. R. Co.*, 52 I. C. C. 47, decided January 21, 1919. As originally published, no inspection of the contents of cases containing eggs was permitted at Boston, New York or Philadelphia when no cases showed external evidence of damage. At other points the so-called 20-case rule was in effect, which permitted consignees to lift the lids of 20 cases in the shipment and examine the top layers for damage. If damage to the contents was disclosed by such inspection, the rules permitted the examination of the top layers of all other cases selected by the consignee. All cases containing damaged eggs were then set aside for reconditioning. The 20-case rule became effective at Philadelphia on October 25, 1919, and at Boston and New York City on February 10, 1941 (R. 13).

The rules and regulations in effect before July 24, 1948, also provided that, except with respect to shipments of storage packed eggs, storage packed dirties, and rehandled and repacked eggs, no claim would be allowed if not more than 5 percent of the eggs was damaged. When the damage exceeded 5 percent the claims were allowed for all damage in excess thereof if the examination developed carrier liability. On shipments of storage

packed eggs, storage packed dirties, and rehandled or repacked eggs, claims for actual damage would be allowed where carrier liability could be established. No expense incurred by the consignee in the ascertainment of damage was allowed. In case of carrier liability, actual and necessary charges for labor and material in reconditioning the damaged cases, including the damaged contents, were borne by the carrier (R. 15, 43-45).

Under these regulations the carriers were paying large claims for damage to shipments of shell eggs. In the hope of bettering the situation, new regulations were published effective July 24, 1948, under which the descriptions "rehandled and repacked" and "storage packed eggs" were restricted to apply only to eggs rehandled and repacked, and graded and sorted, respectively, at packing plants or storage warehouses located at point of origin of the rail shipment (R. 15-16, 46-49).

These new schedules remained in effect until May 2, 1952, when the present schedules, approved by the Commission in *Special Regulations, Eggs, supra*, became effective (R. 15, 1286, A to C).

D. The Proceedings in the Court Below.

On January 20, 1953, Utah Poultry & Farmers Cooperative filed a complaint in the District Court for the District of Utah, Central Division, seeking a decree permanently suspending, enjoining, setting aside and annulling the order of the Interstate Commerce Commission of February 4, 1952, and a mandatory injunction directing the Commission to strike from its files the tariff publishing the rules and regulations in conformity with the Commission's opinion (R. 1-10). Motions for leave to Intervene were filed by Armour and Company on February 4, 1953 (R. 55), by the Secretary of Agriculture of the United States on February 26, 1953 (R. 58), and by Swift & Company on March 12, 1953 (R. 80). The motion of Armour and Company was granted on February 4, 1953 (R. 55-56),

and those of the Secretary of Agriculture and of Swift & Company on March 12, 1953 (R. 80-81). Intervening complaints were filed by Armour and Company, the Secretary of Agriculture, and Swift & Company on February 4, February 26, and March 12, 1953, respectively (R. 56-58, 60-65, 82-83). Answer was filed by the United States of America on March 13, 1953, admitting each and every allegation of the complaint (R. 84-87). Answers were filed by the Interstate Commerce Commission on March 16, 1953, praying the dismissal of the complaints (R. 87-90).

The railroads which are now appellees sought and were accorded permission to intervene on April 13, 1953 (R. 91-96). They filed an answer on the same date praying dismissal (R. 102-103).

In accordance with the requirement of Title 28 U. S. C., Sec. 2325, a three judge court was empaneled, and on March 10, 1954, the majority of the court (Pickett, Circuit Judge, and Ritter, District Judge) stated that judgment would be entered for the defendants, and on May 7, 1954, that was done and the complaints were dismissed (R. 105-149). The court held that "the method of removing from a damage claim filed on shell eggs that portion of the damage for which the railroads are not responsible is a practice over which the Interstate Commerce Commission is given jurisdiction in broad language," that the question before the court was "whether these carrier regulations which seek to avoid liability *for loss not caused by them* are reasonable," that "to determine the reasonableness of such a regulation requires the experience and knowledge of transportation conditions possessed by the Commission," and that "this is the kind of a question Congress intended the Commission to have authority to determine" (R. 125, 127). The court further held that "the liability which the carriers and Commission are forbidden by Section 20(11) to limit is a liability for damage caused by the carrier," that the regulations "purport only to exempt the carrier from losses the carrier

does not cause" and that they are not unlawful (R. 125, 127, 135). It further found that the findings of the Commission are supported by substantial evidence (R. 135). Insofar as the prayer to strike the tariff from the Commission's files was concerned, the court held that consideration of that question would be beyond its jurisdiction which was limited to enforce, enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission (R. 106).

SUMMARY OF ARGUMENT.

I.

There is shell damage in every shipment of shell eggs prior to its receipt by the railroads, and there is also unavoidable shell damage during transportation due solely to the fragile nature of shell eggs and to the previously existing rail damage. This damage is not caused by the railroads. They are not liable for it. The regulations eliminate from damage claims that portion for which the railroads are not responsible or liable. Such an exemption is not forbidden by law or by Section 20(11) of the Interstate Commerce Act. The tariff provisions are reasonable regulations with respect to the receipt of freight such as common carriers were permitted to establish at common law, and which the Interstate Commerce Act now provides it is the duty of the railroads to establish, and over which that Act gives the Interstate Commerce Commission express jurisdiction.

A. The evidence establishes that it is humanly impossible to handle shell eggs without some breakage, and that there is damage in every consignment of shell eggs at the time they are tendered to, and accepted by, the railroads for transportation. This was proved by studies submitted by witnesses from the United States Department of Agriculture and by the railroads. Analyses of

these studies amply support the tolerance of 3 percent in connection with eggs placed in packages at rail point of origin and 5 percent when placed in packages at other than rail point of origin. But no shipper need accept those tolerances. He may submit a federal or state inspection certificate showing the point of origin damage which will be accepted and used by the railroads in processing his claim. Section 20(11) does not prohibit the railroads from making reasonable rules and regulations designed to protect them from being held liable for such damage. The regulations are not an attempt to limit liability for damage caused by the railroads and are not unlawful.

B. The evidence establishes that eggs are fragile and that there is a certain amount of damage during transportation resulting solely because of their inherent nature and the pre-existing damage. Studies submitted by witnesses from the United States Department of Agriculture and by the railroads amply support the tolerance of 1 percent for such damage which the Commission approved. Regulations eliminating such damage from claims filed by shippers are not limitations of liability for damage caused by the railroads and are not forbidden by Section 20(11) of the Act. In order to be damage resulting from the fragile nature of the commodity it is not necessary that the damage would equally have occurred if the eggs had not been carried at all.

C. For the past forty years the Commission has asserted its administrative jurisdiction over tariff rules providing tolerances for losses which are not caused by the railroads. During that period the Interstate Commerce Act has contained a prohibition against limitations of liability such as the appellants here contend make the tolerances unlawful. Notwithstanding this circumstance, the Commission, in the face of the very contentions which are advanced here, has interpreted the Interstate Commerce Act as giving it authority over such tariff toler-

ance rules and has decided that where they are just and reasonable they are not unlawful. This settled administrative construction is entitled to great weight and should not be overturned except for cogent reasons. Moreover, since the first of the cases cited in which the Commission exercised its administrative jurisdiction, that portion of the Interstate Commerce Act, which is now designated as Section 20(11), was amended on seven occasions, and, while Congress must have been aware of the Commission's interpretation, it nevertheless saw no need to countermand that interpretation by amending that portion of Section 20(11) which the appellants here contend eliminates the Commission's jurisdiction. The repeated reenactment of the statute, without change in the portion thereof in question, is persuasive of a legislative recognition and approval of the construction which the Commission has followed.

II.

Loss and damage claims involving shell eggs have been a problem for almost half a century. Tariff rules and regulations involving such claims came before the Commission in *New York Mercantile Exchange* v. *B. & O. R. R. Co.*, 36 I. C. C. 156, decided October 4, 1915, *National Poultry, Butter & Egg Asso.* v. *N. Y. C. R. R. Co.*, 52 I. C. C. 47, decided January 21, 1919, and finally the present case, *Special Regulations, Eggs*, 284 I. C. C. 377. The proceedings in question show there was and is no possibility of resolving the difficulty as though it were a mathematical problem to which there could be only one answer. It is one which calls for the exercise of an informed judgment. It is the kind of question which Congress intended the Interstate Commerce Commission to have authority to determine. To interpret Section 20(11) of the Act as the appellants contend would render impotent the other provisions of the Act which forbid unjust discrimination, undue preference and prejudice,

and departure from the ultimate collection of the full tariff charges. Moreover, it is a rule of statutory construction that statutes should be interpreted so as to harmonize conflicting or inconsistent provisions so as to enable all of them to contribute in proper degree to the object sought to be accomplished. In the present situation the interpretation placed upon the provisions of Section 20(11) by the appellees would avoid unjust discrimination, undue preference and prejudice, the making of involuntary rebates, and a multiplicity of suits. It would further the purpose of the Act.

The appellants' contention that the Commission's report and order are unjust and unreasonable and are not supported by adequate findings and substantial evidence is actually an attack upon the judgment of the Commission. The record contains abundant evidence to substantiate the necessary findings of the Commission and those findings have been made. Since the record as a whole adequately supports the Commission, the Commission's judgment is conclusive.

ARGUMENT

The tariff provisions under consideration provide that on eggs placed in packages at rail point of origin no claim shall be allowed where the physical damage to the eggs at destination does not exceed 3 percent of the contents of the packages containing damaged eggs; that on eggs placed in packages at other than rail point of origin no claim shall be allowed where the damage does not exceed 5 percent; and that where damage exceeds 3 and 5 percent, respectively, claim shall be allowed in excess of those percentages, if investigation develops carrier liability. However, no shipper is compelled to accept these tolerances. The shippers are afforded an opportunity to have the exact amount of point of origin damage determined

and used. The regulations afford the shipper an opportunity of presenting an inspection certificate of federal or state inspection agencies showing the extent of the physical damage to the eggs determined at the rail point of origin of the shipment immediately prior to tender for rail transportation. To the damage shown in such certificate is added 1 percent for further damage in transit due to the inherent nature of the eggs, and the total thus computed is deducted from the claim against the railroad for damages found to exist at destination for which the railroad might be liable (R. 52, 53, 54; 1286 B and C).

The necessity for the regulations rose out of the fact that there is shell damage in shipments of eggs prior to their receipt by the railroads, and the further fact that there is unavoidable shell damage during transportation due to the fragile nature of shell eggs and to the previously existing damage. These points are conclusively established by the record.

The problem presented to the railroads, and later to the Commission, was how to eliminate from a damage claim on a shipment of eggs that portion which was in the consignment when the shipper tendered it for transportation and that which accrued during transportation due to the inherent nature of the commodity. It was necessary that something should be done to protect the railroads from being held liable for such damage.

Since the basic attack upon the Commission's approval of the regulations is predicated upon Section 20(11) of the Interstate Commerce Act, a brief preliminary summary of it is also appropriate. It provides that any railroad shall be liable to the lawful holder of the bill of lading "for any loss, damage or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States, or within an adjacent foreign country when transported on a through bill of lading,

and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; * * *." The prohibition against exemption is against loss, damage or injury to the property *"caused by it"*, the common carrier, and does not prohibit such exemption where the loss, damage or injury is not caused by the common carrier. This interpretation is in accordance with the adjudicated cases. Section 20(11) was originally enacted in 1906 (34 Stat. 593). After amendment in 1915, it was interpreted by the Interstate Commerce Commission in *The Cummins Amendment*, 33 I. C. C. 682. In that report the Commission stated at page 695:

> "A carrier, after the Cummins amendment goes into effect, may not contract to limit its liability for loss or damage caused by it to the property. There is, however, no inhibition as to the limitation of the liability of a carrier for losses not caused by it or a succeeding carrier to which the property may be delivered. The amendment has expressly reapplied the limitation of the prior act with respect to loss or damage caused by the carriers chargeable therewith. It follows, therefore, that the interpretation applied to the act before it was amended is equally applicable to the amendment in so far as the latter affects the right of a carrier to establish rates conditional upon the shipper's assumption of the entire risk of loss attributable to causes beyond the carrier's control. From this it follows that under the amendment a contract or a tariff may lawfully limit to a reasonable maximum the liability of a carrier for losses which it does not cause."

In *Adams Express Co.* v. *Croninger*, 226 U. S. 491, this court in interpreting the statute said:

"What is the liability imposed upon the carrier? It is a liability to any holder of the bill of lading which the primary carrier is required to issue 'for any loss, damage or injury to such property caused by it.' or by any connecting carrier to whom the goods are delivered. The suggestion that an absolute liability exists for every loss, damage or injury, from any and every cause, would be to make such a carrier an absolute insurer and liable for unavoidable loss or damage due to uncontrollable forces. That this was the intent of Congress is not conceivable. To give such emphasis to the words, 'any loss or damage,' would be to ignore the qualifying words, 'caused by it.' *The liability thus imposed is limited to 'any loss, injury or damage caused by it or a succeeding carrier to whom the property may be delivered,' and plainly implies a liability for some default in its common law duty as a common carrier*" (506-507). (Italics inserted.)

The common law rule with respect to a common carrier's liability is set forth in *Chesapeake & Ohio Ry. Co.* v. *Thompson Mfg. Co.*, 270 U. S. 416, where the court said at page 422 "that a carrier is liable for a failure to transport safely goods entrusted to its care unless the loss or damage was due to one of the specified causes," which it enumerated at page 421 as "the act of God, the public enemy, or the act of the shipper, or the nature of the goods themselves." However, the common law did not prohibit a shipper and a carrier from entering into an agreement restricting and qualifying this responsibility. In this connection this court said at page 113 in *York Co.* v. *Central Railroad*, 3 Wallace 107, 70 U. S. 107, that "when such stipulation is made, and it does not cover loss from negligence or misconduct we can perceive no just reason for refusing its recognition and enforcement." More recently, in *San Giorgio I* v. *Rheinstrom Co.*, 294 U. S. 494, this court said at page 496 that "the carrier may exempt himself by contract

from liability for the consequences of events beyond his control." Thus the conclusion in the *Croninger case* is in conformity with the common law.

The railroads submit that the provisions of Section 20(11) are not controlling here. One of the rights conferred upon a common carrier at common law was to establish reasonable rules and regulations governing the conduct of its business. This common law right has been held to be particularly applicable to the receipt of freight. This is epitomized in *Platt* v. *Lecocq*, 158 F. 723 at pages 730-731, in the following language:

> "A common carrier has the right to conduct its business in its own way in accordance with the rules of the common and statutory law. It is bound to receive and to transport goods of the character which it offers to carry at reasonable times and places, but at no other times or places. It has the right to make and enforce reasonable regulations which may lawfully fix the times, the places, the methods, and the forms in which it will receive the various commodities it undertakes to carry, and the rules which it thus adopts are presumptively right and reasonable. The burden is on him who assails them to prove that they are unfair and unjust, and it is only when it clearly appears by competent evidence that they are unreasonable that commissions or courts may lawfully interfere to annul or to change them. Harp *v.* Choctaw, O. & G. R. Co., 61 C. C. A. 405, 410, 125 Fed. 445, 450; Lake Shore & Mich. Southern Ry. Co. *v.* Smith, 173 U. S. 684, 691, 19 Sup. Ct. 565, 43 L. Ed. 858; Harp *v.* Choctaw, O. & G. Ry. Co. (C. C.) 118 Fed. 169."

To the same effect is *United States* v. *Oregon R. & Navigation Co.*, 159 F. 975, 979, and *York Co.* v. *Central Railroad, supra,* in which last mentioned case the court said at page 112 that "he [the common carrier] * * * may prescribe regulations to protect himself against imposition and fraud, * * *."

By virtue of Section 1(6) of the Interstate Commerce Act, it is made the duty of railroads to establish just and reasonable regulations and practices affecting the method of presenting and delivering property for transportation. This duty is set forth in the act as follows:

> "It is hereby made the duty of all common carriers * * * to establish, observe, and enforce just and reasonable regulations and practices affecting * * * the manner and method of presenting, marking, packing, and delivering property for transportation, * * * and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property * * * which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property * * * upon just and reasonable terms, and every unjust and unreasonable * * * regulation, and practice is prohibited and declared to be unlawful."

Section 2 prohibits unjust discrimination and Section 3 undue preference and prejudice.

Section 6(1) of the Interstate Commerce Act requires that such rules and regulations as "in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee" must be published in the carriers' tariffs, and Section 6(7) provides that no carrier shall "refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified."

Section 15(1) of the Interstate Commerce Act confers upon the Interstate Commerce Commission the authority to adjudicate the lawfulness of regulations and practices established by the carriers and this includes not only those regulations which must be published in the tariffs, but as well those which are not so required to be published. The pertinent language is as follows:

"That whenever, * * * after full hearing under an order for investigation a hearing made by the Commission on its own initiative * * * the Commission shall be of opinion * * * that any * * * regulation, or practice whatsoever of such carrier or carriers * * * is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe * * * what * * * regulation or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist * * * and shall conform to and observe the regulation or practice so prescribed."

Thus, the Interstate Commerce Commission has been given jurisdiction over the rules, regulations and practices of the railroads in a broad, clear and unambiguous manner. The tariff provisions here are within that jurisdiction. They are rules, regulations and practices necessary in connection with the receipt and transportation of freight. They assist in the elimination of unjust discrimination and prejudice.

I.

SECTION 20(11) OF THE INTERSTATE COMMERCE ACT IS NOT A BAR TO THE ACTION OF THE COMMISSION IN THIS PROCEEDING.

A. Section 20(11) Has No Application to Damage Existing in Consignments Prior to Their Receipt for Transportation.

It is axiomatic that a common carrier is not liable for damage in a consignment which occurred prior to its

tender and acceptance for transportation. There is always a certain amount of such damage in a consignment of shell eggs. This is conclusively established by the record. The evidence shows that it is humanly impossible to handle shell eggs without some breakage (R. 262, 342, 343, 346). Positive statements to this effect came from the witnesses from the United States Department of Agriculture, appellant here.

Mr. Henry G. F. Hamann, Chief of the Dairy and Poultry Inspection and Grading Division, Production and Marketing Administration, United States Department of Agriculture, was placed upon the stand by the attorney for the United States Department of Agriculture, and, at page 342 of the record, testified as follows:

"COMMR. MITCHELL:—Mr. Hamann, I notice in your Exhibit No. 20, as I read this, your department provides for tolerance permitted in these grade AA eggs of 7.5, is that right?

"THE WITNESS:—That is correct, sir.

"COMMR. MITCHELL:—That includes checks?

"THE WITNESS:—Yes, sir, that includes all tolerances, all tolerance for edible eggs.

"COMMR. MITCHELL:—And on grade A, you permit 11.7 per cent?

"THE WITNESS:—Yes, sir.

"COMMR. MITCHELL:—So you do recognize that there must be a tolerance in the grading of eggs?

"THE WITNESS:—There is a tolerance in the grading of eggs, sir, because it is not humanly possible to remove from any lot of eggs in the candling or grading process all defective eggs.

"COMMR. MITCHELL:—Does that include also cracked eggs?

"THE WITNESS: Yes, sir.

"COMMR. MITCHELL:—You say, then, it isn't humanly possible to eliminate all the cracked eggs that you would find in cases?

"THE WITNESS:—That is correct.

"COMMR. MITCHELL:—All right.

"THE WITNESS:—The tolerances are set up primarily for the purposes of making allowances for human error."

Further, on page 343, the following colloquy took place between Mr. Hamann and his counsel:

"Q. You say that is impossible to eliminate every checked and cracked egg from a case in the process of grading and inspection of eggs?

"A. Yes, sir."

And still further at page 346 of the record Mr. Hamann testified:

"Q. You pointed out it was humanly impossible, or at least impractical, to pack a perfect car. You have never seen a perfect car, have you?

"A. No, sir, I haven't.

"Q. Then there is a normal expectancy of shell damage in every car that is loaded, is there not?

"A. Yes, sir."

The impossibility of having a case of eggs without some breakage was further emphasized by this Department of Agriculture witness by the following which was also taken from his direct examination and which appears at page 343 of the record:

"Q. Suppose you get a car of eggs in bad order in New York. As I understand it, some of the cases may be broken, and you take the good eggs out of two or three cases, and you make one case of good eggs. That is, if your damage is that extensive. Now, by reconditioned case, I mean the case which results, the case of supposedly good eggs. In that case, are all the eggs 100 per cent sound?

"A. They can't be because it is humanly impossible to do it.

"Q. Would you expect to find in that case of eggs the same number or more of checked and cracked eggs than was found in the original case packed back in the country?

"A. I would expect to find about an equivalent number, everything else being equal."

Another witness placed upon the stand by the attorney for the United States Department of Agriculture was Mr. Hermon I. Miller, Chief of Research Division of the Poultry Branch, Production and Marketing Administration, United States Department of Agriculture (R. 361). He made studies with respect to damage to shell eggs at the request of the Interstate Commerce Commission (R. 369). Mr. Miller stated that when eggs from the farm are delivered to the packer 5 percent of them are in a checked condition (shell cracked, but membrane unbroken) upon arrival at the packing plant. Of this 4 percent existed at the time the eggs left the farm, but 1 percent more became checked while traveling to the packer's plant (R. 365, 371, 472-473). In addition to the 5 percent of the eggs which were in a checked condition, 12 percent more also showed shell damage consisting of stains and dirties (R. 371). The witness stated that the eggs are reworked at the packer's plant and that when they left the shipping point the eggs showed 1.9 percent checks and 1.4 percent stains and dirties, a total of 3.3 percent (R. 371). This testimony was given by Mr. Miller at the hearing in Chicago on July 27, 1949. After further tests he corroborated it at a subsequent hearing which was held at Brooklyn, N. Y., on December 15, 1949, his testimony, which appears at pages 471 and 472 of the record with respect to this point, being as follows:

"Q. At the Chicago hearing you presented exhibits Nos. 22 and 23 and you indicated at page 294

of the record that, 'We have some other material for 1948 that we haven't got summarized yet that we will throw into this when we get it completed.'

"Have you made some subsequent checks, since the Chicago hearing?

"A. Yes, Mr. Matson. That was with regard to the amount or the type of egg that was going into cases in midwestern shipping points and the type coming out at destination, and we have examined the complete records and our testimony will stand as presented in Chicago.

"Q. As I recall that testimony, at pages 269 to 298 of the transcript, you found that there were packed into the cases at origins 1.9 percent checks?

"A. That is right.

"Q. And 1.4 percent stains and dirties. Do your subsequent tests that you have run on this material and other material bear you out in those figures?

"A. They do."

The study in which this witness of the Department of Agriculture expressed confidence was described by him at page 363 of the record as follows:

> "The third source of material consists of data on 115 cars secured by our own staff members in 1948 and 1949. In these records we made careful inspections of eggs at points of origin as they were to be loaded into railway cars, marked the sample cases inspected at this point, and re-inspected these same cases and the same eggs at destination. This exhibit should typify the average quality and condition of eggs that are packed in railroad cars for shipment from midwestern points."

The result of the study described in the above quotation is set forth at page 3 of Exhibit No. 22 (R. 1130), and shows the shell damage prior to rail shipment as follows:

Stains and dirties	1.4
Checks	1.9
Loss	0.1
Total	3.4

The reason for the confidence which the Department of Agriculture representative had in the above figures is stated by him at page 364 of the record, as follows:

> "Now, I have more faith in those figures than I would have otherwise because if you look in the middle page between these two tables you find the report on the 737 cars selected at random from the inspection and grading reports, and I think you will agree that to a considerable extent the total or average column for origin and grading reported on this page agree with t origin grading for the 115 cars. That gives me confidence to a certain extent that the figures on the 115 cars are rather representative."

The study with respect to the 737 cars, to which the Department of Agriculture witness referred covers eggs from all parts of the country (R. 370). It appears at page 2 of Exhibit No. 22 (R. 1129) and contains the following breakdown:

Stains and dirties	1.8
Checks	1.9
Loss	0.2
Total	3.9

Mr. Hamann, the aforementioned Chief of the Dairy and Poultry Inspection and Grading Division, Production and Marketing Administration, of the United States Department of Agriculture, stated that approximately 10 percent of the total volume of commercial eggs produced throughout the nation are graded by the Department (R.

329, 331), and that the certificates issued by the Department at the time of the grading show that there is a normal expectancy of shell damage at origin (R. 346).

An examination was made by the railroads of 1,002 origin inspection certificates of the Department of Agriculture which revealed that 18,437 cases of eggs were included in the 1,002 cars examined at shipping point with the following results:

3.04 percent of the natural eggs (eggs before oil dipping) were found to be checked and/or stained.

3.22 percent of the processed eggs were found to be checked and/or stained (R. 240).

The railroads' study of the Department of Agriculture certificates which developed that 3.22 percent of eggs shipped have shell damage at origin is a remarkable substantiation of the study made by the Department of Agriculture in response to the request by the Commission.

The railroads also submitted the results of studies of inspections made by them at rail shipping points (R. 240). These studies showed that there is shell damage of one kind or other in every car regardless of whether or not the eggs had just been rehandled and repacked or had been hauled over the highways various distances before loading into the rail freight car. The result of this research is summed up as follows:

From	Year	No. of Cars	Percentage Damage
Indiana	1947	74	2.2
"	1948	30	3.2
"	12/4/48 to 2/19/49	22	2.8
Iowa	1947		2.57
"	1948		2.46
Minnesota	1947		1.81
"	1948		3.84

The results of another railroad study made at shipping point appears at page 302 of the record as follows:

> "We adopted a program of taking 15 cases and inspecting 100 eggs to determine how many eggs were checked, broken, stained and dirty. The statement shows that we made inspection on 60 cars and we developed through that process that we used 2,256 checks, 98 broken, or a percentage of 2.61."

Shipping point studies made by railroad representatives indicate that shell damage before rail transportation is chargeable to the following factors in the order of their importance, not one of which is attributable to the railroads: *First*, the inherently fragile nature of eggs. It is generally conceded by all parties acquainted with the commercial handling of eggs that a certain amount of shell damage is inescapable. This normal expectancy of damage starts at the nest and, depending upon the strength of the individual shell, continues progessively until the egg is used by the consumer. *Second*, the handling of the eggs in the candling and repacking operations. Checks (cracked eggs with unbroken membrane) develop in any oil-dip processing of the eggs, and eggs are broken when the egg case is lidded. *Third*, the handling by the shippers of the packed egg cases to and into the freight car. Very often there is no supervision of the handling of the packed cases in the car. Sometimes unskilled or itinerant labor, with apparently no previous training, is used by the shippers to load the cars, and with no supervision on the part of the owner of the eggs in promoting careful and proper loading (R. 241).

It is axiomatic that damage existing in a consignment at the time it is tendered for transportation is not caused by the railroads and that the railroads are not liable for it. The regulations afford the shipper the opportunity of submitting a federal or state inspection certificate showing the point of origin damage which will

be accepted and used by the railroads in processing his claim. Section 20(11) does not prohibit the railroads from making reasonable rules and regulations designed to protect them from being held liable for such damage. The tariff provisions simply provide a reasonable and practical means of eliminating from claims for loss and damage that portion which is not caused by the railroads. There is no attempt to limit liability for damage caused by the railroads.

B. The Tolerance for Damage During Transportation Due to the Inherent Nature of Shell Eggs Is Not Prohibited by Section 20(11).

That an egg is regarded as a fragile commodity and very susceptible to shell damage in conclusively established by the testimony of the witness from the United States Department of Agriculture (R. 335).

The record is also clear that there is a certain amount of damage to the eggs resulting solely during transportation because of the inherent nature of the shipment, for which the Commission approved a tolerance of 1 percent in those instances where the shipper exercised the tariff option of presenting a federal or state inspection certificate setting forth the amount of damage existing prior to the receipt of the consignment by the railroad. The record shows that the condition of a damaged egg never gets better, but always gets worse with handling. Not only is there a worsening during transportation of the condition of the eggs which were in a damaged condition at the time they were received by the railroads, but those eggs also cause damage to others which had been sound (R. 302, 303). At page 3 of the Department of Agriculture's Exhibit No. 22 (R. 1130) is set forth the results of studies made by it with respect to 115 carloads of eggs delivered on all parts of the east coast, the Gulf port cities, and the west coast (R. 354, 475). Included among them were 12 cars which went to New York City (R. 475). One study

was of the condition of these 115 carloads at point of origin and the other study was of the condition of the same 115 carloads at destination after they had received rail transportation. The eggs were candled at both origin and destination (R. 474). The difference between the number of stains and dirties, checks and loss at origin, was found to be 1.7 percent (R. 31, 1130). The difference between the checked eggs at origin and at destination was 0.8 percent (R. 31, 473, 1130). The witness said that his study was supported by 8,000 additional cars, using the following language at page 475:

> "A. Fifteen cases to the car, a hundred eggs in each case, 115 cars supported by approximately 8,000 additional cars.
>
> "Q. These are all rail tests?
>
> "A. All rail tests."

It has also been contended by the appellants that the Commission made a basic error of law in holding that the susceptibility of eggs to damage is an inherent defect on the ground that the damage to the shell eggs results from an outside force applied by the railroads rather than from any tendency of the eggs to deteriorate spontaneously. It is respectfully submitted that, in order to be damage resulting from an inherent defect, it is not necessary that the damage would equally have occurred if the goods had not been carried at all. This principle is supported by the case of *Lister* v. *Lancashire & Yorkshire Railway Co.* [1903] 1 K. B. Div. 878. There the Railway Company contracted as a common carrier to carry for Lister an engine from his yard to a neighboring town on the railway. The engine was on wheels and fitted with shafts to allow its being drawn by horses. While the Railway Company was drawing the engine with its horses to the railway station one of the shafts, owing to its being rotten, broke. The horses took fright and upset the engine, which was damaged. The defective condition of the shaft was not known by either the plaintiff or de-

fendant and could not have been discovered by an ordinary examination. The county court judge was of the opinion that the Railway Company was liable and that the rule, that a common carrier is excused from liability for damage if it be caused by the inherent vice of the thing carried, is limited to cases in which the inherent vice itself directly causes the damage without any contributory act done by the carrier, as in the case of a vicious animal injuring itself, or overripe fruit becoming damaged by the pressure of its own weight. The appellate court, however, ruled to the contrary stating:

> "The county court judge, in thinking that the rule as to the non-liability of a common carrier for damage caused by an inherent defect in the thing carried was limited to cases in which the damage would equally have occurred if the thing had not been carried at all, in my opinion went much too far. When once you arrive at the fact that the thing is being carried in the ordinary way, and every precaution has been taken consistent with that mode of carriage, and the accident happens from the unfitness of the thing for that mode of carriage, the carrier is not responsible."

Also in point are *Leonard* v. *Pennsylvania R. Co.*, 15 F. Supp. 55, *Meltzer* v. *Pennsylvania R. Co.*, 29 F. Supp. 840, *Bronstein* v. *Baltimore & Ohio R. R.*, 29 F. Supp. 837, where the courts fixed tolerances for damage not caused by the railroads in connection with shipments of watermelons. Obviously, if the watermelons had been allowed to remain in the fields they would not have been damaged during the course of rail transportation, and there would have been no need for the court to have stated, as it did in the *Bronstein case*, "that when watermelons are loaded in bulk and transported by rail over long distances there will always be a certain amount of damage which cannot be avoided even by the most careful handling" and there would have been no need for the courts to have applied the tolerances which they did.

The damage during transportation is not caused by the railroads, but rather is due to the inherent nature of shell eggs. Section 20(11) of the Act does not prohibit the railroads from making reasonable rules and regulations designed to protect them from being held liable for such damage.

C. The Commission Has Administrative Jurisdiction Over Tariff Tolerance Rules and Has Consistently Interpreted the Interstate Commerce Act as Granting it that Authority.

For the past forty years the Commission has asserted its administrative jurisdiction over tariff rules providing tolerances for losses which are not caused by the railroads. It has done so in the face of the same contentions advanced here by the appellants. In *Crouch Grain Co. v. A. T. & S. F. Ry. Co.*, 36 I. C. C. 265, decided in 1915, the Commission approved the lawfulness of a tariff rule which provided that, in the adjustment of claims for loss of grain, allowances for natural shrinkage to be deducted from the claims should be ⅛ of 1 percent on wheat, flaxseed, rye, oats and barley, and ¼ of 1 percent on corn. In its second decision in that case, 41 I. C. C. 717, decided in 1916, the Commission answered the complainants' contentions that the allowances were unjust and unreasonable because (1) the carriers thereby sought to limit their liability in violation of the Act to regulate commerce; (2) it was in effect an arbitrary determination in advance by the carrier of a disputed question of fact; and (3) it amounted to the taking of property without due process of law. In response to the first contention, the Commission pointed out that there was no limitation against losses caused by the carrier, but rather that it was against liability for losses due to the inherent nature of the commodities themselves, and that there was no legal objection to a stipulation for exemption from liability for losses due to causes beyond the carrier's

control. In dealing with the second objection the Commission reviewed the contentions of the complainants that there is such a variation in the shrinkage of grain, depending on the time of year in which transported, the distance it moves, and the route of movement, that a carrier cannot tell, with any degree of certainty, how much shrinkage, if any, will occur on a given shipment, and that, therefore, for the carriers arbitrarily to fix in advance any stated amount to be deducted therefor in the adjustment of claims for loss and damage deprives the shipper of the right to a trial by jury of a disputed question of fact in contravention of Article 7 of the Constitution of the United States. The Commission rejected this contention and quoted from *Cardwell* v. *Union Pac. R. Co.*, 90 Kan. 707, 136 Pac. 244, wherein the court having a similar contention before it had held such tolerances were lawful and that it was not necessary that evidence be offered of the fact that there is shrinkage of wheat in transit, a fact "which seems to be so well known that the courts will take judicial notice of it." The court in the case cited further stated that "whether any such shrinkage occurred during a specific shipment could hardly be determined without assuming the absolute accuracy of the initial and receiving weights." As to the third objection that the effect of the provision in question was to take the property of the shipper without due process of law, the Commission stated that this was met by it by the decision in its original report to the effect that the rule assailed was not shown to be unreasonable. The finding in the original report to which the Commission refers appears at page 267 thereof and reads as follows:

> "Defendants admit that the shrinkage is not uniform, but insist that their rules for calculating it are both practicable and reasonable. The loss is invisible, and in *Baltimore Chamber of Commerce* v. *P. R. R. Co.*, 15 I. C. C. 341, we recognized the im-

possibility of absolute precision in a fixed schedule of deductions intended to meet varying conditions, although the subject was there involved within narrower limits than here. The record indicates that the deductions in question were fairly conservative, and upon all of the facts disclosed we find that the rule assailed is not shown to be unreasonable."

In *National Poultry Butter & Egg Assn.* v. *N. Y. Central R.R. Co.*, 52 I. C. C. 47, decided January 21, 1919; or over 36 years ago, the Commission was called upon to pass upon the lawfulness of loss and damage rules in connection with shipments of shell eggs. In doing so, the Commission said at page 57 of its report that it had no jurisdiction over damage claims, as such, but that it did have jurisdiction over practices of carriers and tariff rules. It considered and approved a tolerance rule of 5 percent in connection with eggs which were known as current receipts or current receipts rehandled, which had been in effect since at least February 15, 1916, or almost 40 years ago. This settled administrative construction is entitled to great weight and should not be overturned except for cogent reasons—*United States* v. *Chicago, North Shore R. Co.*, 288 U. S. 1, at page 13. This is particularly so when it is borne in mind that at the time of the decision in the *National Poultry, Butter & Egg Assn. case*, and of the second decision in the *Crouch Grain Co. case*, in both of which cases tolerances were approved, the so-called second Cummins Amendment (Act of August 9, 1916—39 Stat. 441) was in effect and contained the prohibitions against limitations of liability upon which the appellants now rely under Section 20(11) of the Interstate Commerce Act of which the second Cummins Amendment forms a part. This view is supported by *New Haven R.R.* v. *Interstate Commerce Commission*, 200 U. S. 361, where the court conceded the binding effect of decisions of the Commission which had been "adhered to by that body during

the many years which have followed", saying at pages 401-402:

> "We make this concession, because we think we are constrained to do so, in consequence of the familiar rule that a construction made by the body charged with the enforcement of a statute, which construction has long obtained in practical execution, and has been impliedly sanctioned by the reenactment of the statute without alteration in the particulars construed, when not plainly erroneous, must be treated as read into the statute. Especially do we think this rule applicable to the case in hand, because of the nature and extent of the authority conferred on the Commission from the beginning concerning the prohibitions of the act as to rebates, favoritism and discrimination of all kinds, and particularly in view of the repeated declarations of the court that an exertion of power by the Commission concerning such matters was entitled to great weight and was not lightly to be interfered with."

This is particularly true in the instant case. Congress has exhibited an almost parental concern for Section 20(11), revising it frequently, and particularly when it has detected anything viewed as an erroneous interpretation by the Interstate Commerce Commission. For example, only 18 months after enactment of the first Cummins Amendment (Act of March 4, 1915, 38 Stat. 1196), Section 20(11) was revised because the "construction put upon the [Cummins] proviso by the Interstate Commerce Commission has resulted in some vexatious requirements insisted upon by carriers and in some injustice. * * *" *Sen. Rep. No. 394*, 64th Cong., 1st Sess. 2 (1916). This change in the Cummins Amendment was enacted on August 9, 1916 (39 Stat. 441). The Commission had decided the first *Crouch Grain* case, *supra*, only ten months earlier, on October 5, 1915. Congress must have been

aware of this decision,* but it saw no need to countermand the Interstate Commerce Commission's interpretation.

The Cummins Amendment was revised again on February 28, 1920 (41 Stat. 494) "* * * so as to make it clear that where loss, damage, or injury occurs where the property is in the custody of the carrier by water the liability is to be determined by the law applicable to transportation by water, which confines liability to the value of the vessel and the freight money." *H.R. Rep. No. 456*, 66th Cong., 1st Sess. 31 (1919). A second 1920 revision also clarified the Cummins Amendment, in so far as it concerned the two-year period for institution of suits against carriers (41 Stat. 494). The two clarifying amendments of 1920 were enacted approximately one year after the Commission's *National Poultry* decision, *supra*, on January 21, 1919, and after the substance of this decision had been reported to Congress.†

Section 20(11) was subsequently amended on five different occasions—in 1926 (44 Stat. 835), 1927 (44 Stat. 1448), 1930 (46 Stat. 251), 1935 (49 Stat. 543), and 1940 (54 Stat. 919).

The pertinent language of Section 20(11), which had been construed in both the *Crouch Grain* and *National Poultry* cases, remained intact throughout this constant legislative revision and clarification. Congressional acquiescence in the judicial or administrative interpretation of a statute is considered legislative intent at the time of enactment. 2 Sutherland, *Statutory Construction* § 5103-5109 (3d ed. Horack 1943). And, as Mr. Justice Roberts said in *Old Colony R. Co.* v. *Comm'r*, 284 U. S. 552, 557 (1931): "* * * The repeated reenactment of a

* Congress knew of the Interstate Commerce Commission's interpretation which led to the 1916 amendment, and was officially informed of the substance of the first *Crouch Grain* decision. 30 I. C. C. Ann. Rep. 132 (1916). Congress was also informed of the substance of the second *Crouch Grain* decision. 31 I. C. C. Ann. Rep. 116 (1917).

† 33 I. C. C. Ann. Rep. 103-104 (1919).

statute without substantial change may amount to an implied legislative approval of a construction placed upon it by executive officers. * * *" Mr. Justice Stone used similar language: "* * * The reenactment of a statute by Congress, as well as the failure to amend it in the face of the consistent administrative construction, is at least persuasive of a legislative recognition and approval of the statute as construed. * * *" *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 492-493 (1931).

The mathematical and unrealistic interpretation of Section 20(11) urged by the appellants has long and consistently been rejected. It is respectfully submitted that this settled administrative construction of the statute to the effect that the Commission's jurisdiction over such tolerances has not been destroyed by the provisions of Section 20(11) of the Act is persuasive that the Commission has that jurisdiction and that such tolerances are not unlawful.

II.

The Regulations Are Just and Reasonable and the Commission's Approval of Them is Supported by the Record and Adequate Findings.

Loss and damage claims involving shell eggs have been a problem for almost half a century. By the time the Commission instituted the investigation which resulted in this proceeding the situation had become an intolerable one which demanded a remedy.

In *New York Mercantile Exchange* v. *B. & O. R. R. Co.*, 36 I. C. C. 156, decided October 4, 1915, the matter was brought to the Commission's attention by a complaint contending that the tariff rules then applicable to shell eggs were unlawful. It was contended (page 158) that the rules operated "to make the collection of claims for loss and damage more difficult" in New York

than in other cities. The report noted (page 159) that dishonest practices had served to swell loss and damage claims improperly. Following an investigation by the Commission and criminal prosecution of certain of those involved, a revised rule had been established by the railroads permitting inspection for damage to shell eggs only of the cases showing external evidence of damage. The enforcement of that rule had been enjoined by the United States District Court for the Southern District of New York "unless and until said rule and regulation has been filed with the Interstate Commerce Commission." The rules were filed with the Commission and became effective December 23, 1913. Their lawfulness was challenged in the cited case.

The Commission noted (page 161) that the rule there under consideration simply required the consignees to receipt for cases of eggs in the same terms as the carrier receipted for them when offered for shipment wherever external evidence of damage was absent, and that it was not unjust or unreasonable.

In *National Poultry, Butter & Egg Asso.* v. *N. Y. Central R. R. Co., supra,* decided January 21, 1919, the Commission was again called upon to pass upon the lawfulness of tariff rules applicable to loss and damage claims covering rail shipments of shell eggs. In that proceeding it found a 5 percent tolerance rule there under consideration reasonable when applied to current receipts or current receipts rehandled. The report indicated (page 49) that the 5 percent rule was based upon the assumption that shippers ordinarily packed approximately 18 broken or damaged eggs into cases of 30 dozen eggs, and that it was practically admitted by the complainants that it would be reasonable to continue to apply that tolerance to shipments of current receipts or rehandled current receipts.

In its report in the *New York Mercantile case,* at pages 160-161, the Commission said:

"Even if conditions of time, space, and cost permitted a complete examination of the contents of all cases upon delivery, or if an inspection of a certain number of cases in each consignment could be relied upon to disclose a fair average of the total damage, the difficulty as to the ascertainment of the carrier's liability would not be met, unless and until it was shown what the condition of the contents of the cases was when offered for shipment. While it is abundantly shown of record that the total damage disclosed by full examination is far in excess of that existing in those cases showing external evidence of damage, it is also proved that many damaged eggs are ordinarily contained in the cases when offered for shipment."

In its report in the *National Poultry case* the Commission stated (page 61) that nothing contained in that report "precludes the carriers, by appropriate tariff rule, from requiring a disclosure by shippers of the condition of the shipments when offered for transportation".

The complainants in the *New York Mercantile case* suggested that the carrier be required to ascertain the condition of the contents of egg cases at point of origin, but the Commission stated that was clearly impossible and refused to impose that requirement. In the case at bar traffic witness Schilt for the United States Department of Agriculture offered such an inspection *by the railroads* as the only solution of the present problem (R. 679, 680). That solution is just as "clearly impossible" today as it was in 1915 when the Commission refused to adopt it. As the only practical alternative, the railroads have provided the present regulations which give the shipper the option of offering a federal or state inspection certificate establishing the exact amount of damage existing at the time a shipment is offered for transportation. When the shipper elects not to take

advantage of that opportunity, the tolerances offer the only practical and lawful alternative.

The situation had become so serious in recent years that the Commission instituted an investigation on its own motion. A large number of witnesses presented evidence for its consideration, including representatives of the United States Department of Agriculture, the United States Army, the egg trade, and the railroads, and a large and voluminous record was made. The problem was pinpointed and examined in a very thorough investigation. The determination of the average shell damage existing in rail shipments of eggs at the time they are tendered to and accepted by the railroads for transportation was conclusively proved, as was the in-transit damage attributable to the inherent nature of the commodity. The Commission had the benefit of briefs and oral argument. With all that before it the Commission, as an administrative body of experts, painstakingly prepared a report in which it unanimously determined the rules and regulations here assailed were just, reasonable, and otherwise lawful, and the lower court has upheld the lawfulness of the order issued by the Commission based upon its investigation and report. The Commission's determination of the normal expectancy of breakage not caused by the railroads was not an incident such as it would be in a proceeding to recover damages in a court of law; it was the precise issue upon which the hearings were focused, and upon which the Commission exercised its judgment.

Section 1 of the Interstate Commerce Act requires the railroads to establish just and reasonable regulations with respect to the receipt of freight. Section 2 prohibits unjust discrimination, and Section 3 undue preference and prejudice. Section 6 requires the publication of rates, rules and regulations, and provides that no carrier shall "refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified." Section 15 of the Act charges the Commission with the duty of

seeing that the regulations and practices of the railroads are just, fair and reasonable. It was in conformity with that statutory mandate that the Commission conducted its investigation and undertook to fulfill its duty under the law.

There was and is no possibility of resolving this difficulty as though it were a mathematical problem to which there could only be one answer. It calls for the exercise of an informed judgment. There is no one or any body that is better qualified to determine the normal expectancy of breakage for which the railroads are not responsible than the Interstate Commerce Commission. It is an administrative tribunal appointed by law and informed by experience. (*Illinois Central R. Co.* v. *I. C. C.*, 206 U. S. 441). It is a body of experts with a national vision (*Wallower* v. *U. S.*, 32 F. 2d 524, 530).

There is nothing unique in providing a tolerance for the normal expectancy of shell damage to eggs. Tolerances have been adopted by the United States Department of Agriculture, along with the trade, in grading eggs. For example, the tolerances on AA grade is 7½ percent and on A grade 11.7 percent, (R. 342). Likewise, the Army of the United States allows tolerances in connection with its purchases of shell eggs. On shell eggs for export a 5 percent tolerance is permitted which "can be stains, checks, leakers, broken eggs, and loss." On eggs not for export a 10 percent tolerance is permitted (R. 406).

The appellants urge that there might be instances in which shipments destroyed by carrier negligence contained less than the percentages of damage not caused by the railroads found reasonable by the Commission, and, therefore, that the regulations are unlawful because of the provisions of Section 20 of the Act to the effect that the railroads shall be liable "for the full actual loss, damage, or injury to such property" caused by them. Such a narrow construction of one portion of the Interstate Commerce Act renders impotent the other provisions of the

Act, whereas the interpretation placed upon the Act by the Commission gives a practical interpretation of Section 20(11) and still retains the beneficial consequences of the regulations which are demanded by other provisions of the Act. The railroads submit that the interpretation of a portion of the statute in conjunction with the other portions thereof is supported by the following remarks set forth in *Arkansas Fertilizer Co.* v. *United States*, 193 Fed. 667, at page 670:

> "In construing remedial statutes, especially those of a generic character, courts have not hesitated to restrict and modify the ordinary meaning of words and phrases, and even of entire paragraphs, in order to harmonize conflicting or inconsistent provisions and so enable all of them to contribute in proper degree to the object sought to be accomplished. Instances of this kind are too familiar to require citation. Indeed, the Supreme Court, in the Abilene Case, 204 U. S. 426, 27 Sup. Ct. 350, 51 L. Ed. 553, declared that a right of action as old as the common law had been taken away by the act to regulate commerce, since otherwise full effect could not be given to the purpose of that statute to prevent discriminations."

Since the letter of the law refuses to hold common carriers liable for damage to the lading which existed prior to the time that the lading was received by the carriers, and for damage occurring during the course of transportation due to the nature of the goods themselves, some question might be asked as to the need for the tolerances approved by the Commission and now established in the tariffs. The answer is to be found in the practical considerations in the application of the law. The uniform bill of lading recites that the property received for transportation is "in apparent good order, except as noted (contents and condition of contents of packages unknown), * * *." In *Isdaver* v. *Philadelphia & Reading Ry. Co.*, 54 Pa. Super. 509, it was stated that the quoted matter

"* * * is an admission as to conditions visible and open to inspection, but does not bind the carrier to liability for the contents in the absence of evidence that the package is not what it appears or is represented to be. The admission applies to external conditions but not to that which is not open to inspection. The responsibility of the carrier in a case like this is only to deliver the goods as he receives them."

To the same effect is *Orunsten* v. *New York Central R. Co.*, 165 N. Y. Supp. 997. The following appears at page 998:

"Where the shipper loads the goods, and the common carrier merely issues the uniform bill of lading, without making any special examination, the mere formal declaration of the bill of lading that the goods were received in apparent good order does not call upon the defendant to establish the contrary, nor to assume the burden of showing its freedom from negligence. The evidence of the actual condition of the goods was presumptively known to the shipper, and it must have been available to the plaintiff, and, before he can call upon the defendant to show freedom from negligence, he must show that the conditions existed which fairly gave rise to an inference of such neglect."

It is submitted that these cases correctly state the law.

In the face of what is stated above it would appear at first blush that the railroads are amply protected in suits instituted to recover claims for alleged damage to shell eggs in that the burden is upon the claimant to prove that the eggs were not broken or in otherwise damaged condition when they were received by the railroads for transportation. However, it is a relatively easy matter for a shipper to overcome this difficulty. He need only offer testimony that the eggs were carefully packed, that only sound eggs were placed in the crates, and that the fillers

and flats were such as to protect the eggs during the course of packing. If a movement to the railroad freight station was involved it would only be necessary to produce testimony that the crates were carefully handled and not subjected to rough treatment during the course of that transportation. Having thus established a *prima facie* case, the burden would be upon the railroad to show that the loss, or at least part of it, resulted from an excepted cause —*Galveston, H. & S. A. Ry. Co.* v. *Wallace*, 223 U. S. 481, 492. If the railroad should introduce expert testimony to prove that it is humanly impossible to pack and move a crate of eggs without some breakage, as this record before the Commission establishes, the question of how much that breakage is would be left to the jury or to the court if the case should be tried without a jury. Thus, as a practical matter, the railroads are in a vulnerable position in proceedings before the courts to recover claims for alleged damage to shell eggs. At best the question of the amount of damage in the crates at the time they are received for transportation, and the amount which occurs during rail transportation due to the fragile nature of the eggs—the evidence before the Commission establishes conclusively that there always is some damage—is left to the jury hearing the case. Individual juries will differ in their conclusions and this will result in a lack of uniformity and discrimination. The regulations providing uniform deductions for damage not caused by the railroads would eliminate this. There is a necessity for the regulations and this fact is particularly pertinent for Section 1(6) of the Interstate Commerce Act dealing with the duty of common carriers specifically requires them to establish just and reasonable regulations and practices "relating to or connected with the receiving, handling, transporting, storing, and delivery of property * * * which may be *necessary* or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this part upon just and reasonable terms * * *." (Italics inserted.)

The appellants cite *Chicago, M. St. P. R. Co.* v. *McCaull-Dinsmore Co.*, 253 U. S. 97. In that case the court held unlawful a provision in the bill of lading that claims for loss or damage should be settled on the basis of the value of the property at the time and place of shipment, on the ground that it was a limitation of liability prohibited by the Cummins Amendment. The circumstances incident to the situation there were so different from those involved in the case at bar that the railroads respectfully submit that it is not in point. There was no question in that case but that the carrier caused the damage. The issue before the court was whether a provision in the bill of lading fixing the measure of damages to be paid on the origin value, rather than on the destination value, was lawful. Here there is no issue as to the value to be used. The issue is whether tariff provisions dealing with loss or damage not caused by the railroads are lawful. The purpose of the regulations here is not to give the contractee any less than what he would have had if the contract had been performed, but rather to see that he gets no more than he would have gotten if the contract had been performed. The intention of the regulations is to remove from a damage claim that portion of the damage for which the railroads are not liable. Their purpose is to introduce certainty so far as it is possible and practical to do so. Obviously the time to determine the damage existing in a consignment of shell eggs when it is tendered to the railroads for transportation is at that time and not after. The regulations afford the shippers the opportunity of doing this.

The case of *Toker Co.* v. *Lehigh Valley R. Co.*, 12 N. J. 608, 97 A. 2d 598, is also cited by the appellants. The statement therein upon which they rely is incomplete and, therefore, inadequate for general application. The situations there and here are substantially different. In the cited case the Interstate Commerce Commission had prescribed a certain weight tolerance for "water allowance"

to be used in the computation of transportation charges on shipments of coal. The Railroad Company insisted upon using this tolerance in settling claims for loss of lading. In the case at bar the very purpose of the Commission's investigation, and of its report and order, was to eliminate from damage claims that damage not caused by the railroads. The computation of the transportation charges is not involved. Moreover, the opportunity afforded the shipper in the present case to submit a certificate showing the damage prior to the receipt for rail transportation is something which could not have been afforded the shipper in connection with the situation involved in the *Toker case*.

The regulations would avoid a multiplicity of suits and a variety of decisions. They would decide the question once and for all except as the Commission might change the regulations from time to time to meet changed conditions. They provide a uniform method of removing from damage claims that breakage which is not caused by the railroads and for which they are not responsible. One of the very purposes for the creation of the Interstate Commerce Commission was to establish uniformity in connection with transportation so far as it is possible to do so—*New Haven R.R.* v. *Interstate Commerce Commission, supra,* at page 391. The regulations are in conformity with that purpose. They will promote the elimination of unjust discrimination which is the primary purpose of the Interstate Commerce Act and the Commission created by it—*United States* v. *Louisville & Nashville R.R.*, 235 U. S. 314, 320. They will aid in preventing involuntary rebates which will result if the breakage not caused by the railroads is not eliminated from the damage claims. This court has held that it is the duty of the courts to aid the railroads in resisting the payment of involuntary rebates—*Louden* v. *Simonds, etc. Grain Co.*, 306 U. S. 516, 521.

The claim situation in connection with shell eggs, in so far as it relates to damage existing at the time shipments are offered for transportation and the in-transit damage attributable to the inherent nature of the commodity, demands a remedy. The regulations provide it. They provide a method which is logical and desirable, and the only practical one. It is respectfully submitted that the law must take into consideration the interests of a practical and reasonable administration of the Commission's regulatory duties and the necessities of an intolerable situation. A condemnation of these regulations would make possible the continuance of the very things which the Interstate Commerce Act is intended to eliminate.

The appellants argue that the Commission's report and order are unjust and unreasonable, and not supported by adequate findings or substantial evidence on the record as a whole. They contend that there is no basis in the record for the approval of nation-wide tolerances; that the inspection at origin is substantially different from that at destination; that the Commission's conclusions as to the damage resulting from the "inherent vice" is supported by no adequate finding or evidence, and is directly contrary to its finding on the same subject in 1919; and that there is no warrant for different tolerances for eggs packed at rail origins and those packed at points other than rail origins.

There is no substance to any of these contentions. What the appellants are really doing is challenging the judgment of the Commission, rather than the basis for its findings of fact, although the law is clear that in matters of judgment the decision of the Commission is conclusive.

At pages 20 to 26 of this brief, portions of the evidence before the Commission have been reproduced. Much of it came from the United States Department of Agriculture itself. That evidence shows that there is preexisting shell damage in every shipment of eggs offered for rail

transportation, that an additional amount of damage is sure to occur during transportation because of the inherent nature of the commodity. This damage which is not caused by the railroads exists irrespective of where the eggs may originate or where they may be delivered. In its decision the Commission carefully reviewed that evidence (R. 31). The Commission then found as follows (R. 32):

> "It also establishes that there is a normal expectancy of shell damage in every car loaded with eggs, and that it is at least impractical to load a perfect car.
>
> "Studies submitted by respondents in respect of inspections made by them of shipments of eggs at point of origin indicate that there is shell damage in every car, irrespective of whether the eggs are handled and repacked at rail point of shipment or are trucked to that point."

Notwithstanding the above mentioned evidence and Commission findings, the appellants contend that the sharp difference between claims on the eastern seaboard and elsewhere, and the fact that similar claims are negligible for eggs transported by truck, argue against nation-wide tolerances. But the damage not caused by the railroads exists irrespective of the destination of the shipment. It is the potential basis for an inflated claim. If claims are filed primarily by eastern receivers, it is obvious that a nation-wide tolerance cannot hurt receivers in other parts of the country who do not file similar claims. The fact that it may not be the universal practice of receivers to file claims for damage in connection with truck shipments is immaterial. The record shows that there is substantial damage in rail shipments for which the railroads are not responsible. The Commission made the necessary findings, supported by abundant evidence, to substantiate the justness and reasonableness of the nation-wide tolerances.

The appellants urge that the inspection at destination is "less exacting than the inspection by the packer at the origin", and that "it would seem necessary to follow that at least the percentage of damage escaping detection at the point of origin is overlooked at the destination." This is wholly beside the point and begs the real question. If there is damage existing in a shipment of eggs at the time it is tendered for rail transportation, the railroads have an absolute right to have the amount thereof determined by one means or other in order to protect themselves against claims for liability for that damage for which they are not liable. The shipper has an opportunity to have that damage determined and recognized through the medium of a federal or state egg inspection certificate. If there is no inspection at rail point of origin, there is no way for the railroads to know how many eggs have been damaged before they receive them. When inspection is made at destination it is a rigid one (R. 338). The Commission found that where the trouble is most prevalent the inspection "is being performed with a view to detecting all damaged eggs" (R. 34). The receiver may go through the entire case of eggs to find as many damaged eggs as he possibly can. That is up to him (R. 280). These circumstances establish that the Commission made an appropriate finding which was established by the evidence.

Another contention of the appellants is that the Commission's conclusion as to damage resulting from "inherent vice" is supported by no adequate finding or evidence, and is directly contrary to its findings in the *National Poultry* case, decided in 1919. That contention is not correct. Once more it will be found that the evidence of the Department of Agriculture's own witnesses, reproduced in this brief at pages 27 and 28, establishes the challenged fact. Witness Miller's testimony with respect to a 115-car study shows that the origin shell damage of 3.4 percent was found to be 5.1 percent at destina-

tion, or an increase of damage in transit of 1.7 percent. In making this test the same type of inspection was made at both ends. The Commission specifically dealt with this evidence in its report (R. 31), and found (R. 42):

> "Eggs containing checks, blind or visible, are to a certain extent in a damaged condition. In other words, the shells on those eggs are defective or cracked. These defects or cracks, unlike breaks or fractures in the bones of animate things, do not heal or knit with the passage of time. Any change in the condition of a defect or crack in an eggshell can result only in its enlargement, a healing or knitting thereof not being possible. The slightest movement in transportation may cause additional damage to such eggs. Such damage cannot be imputed to the negligence of the carrier but rather to the inherent nature of the commodity. Even a slight enlargement of the check or defective part could, by a rupture or break in the shell membrane, result in a leaking egg. Such an egg causes additional damage, such as stains, to otherwise sound eggs in the same case."

The inference that the Commission's judgment now must be wrong because it is somewhat at variance with what it said in the *National Poultry* case is clearly without merit. The *National Poultry* case was decided on the record before the Commission in that proceeding. The conclusions and findings of the Commisison in this proceeding are based on the record before it in this proceeding, as they of course had to be (*United States* v. *Abiline & So. Ry. Co.*, 265 U. S. 274, 288), since this was an entirely different proceeding and an entirely different record made thirty-five years later. There is clearly no merit to the contentions of the appellants with respect to that point.

The appellants argue that there is no warrant in the record for the approval of different tolerances on eggs

packed at rail origins and those packed at points other than rail origins. They argue that there is no evidence to support different tolerances. The record now before the Commission is replete with evidence that there is a substantial amount of shell damage in shipments of eggs moving from country points to packing plants, most of which are located at rail shipping points. For example, Witness Miller, testifying for the United States Department of Agriculture, stated that when eggs from the farm are delivered to the packer 5 percent of them are in a checked condition. Of that 5 percent, according to this witness, 4 percent existed at the time the eggs left the farm and 1 percent more became checked while travelling to the packer's plant. In addition to that 5 percent, 12 percent more also showed shell damage consisting of stains and dirties. Witness Miller stated that the eggs reworked at the packer's plant left the shipping plant with a total of 3.3 percent damage. He reaffirmed that testimony at a subsequent hearing as a result of further tests he had made (R. 365, 371, 472-473). Indeed, in the *National Poultry* case the Commission found reasonable a 5 percent tolerance on current receipts or current receipts rehandled, current receipts being eggs which came directly from the producer or country merchant.

Contrary to the contentions of the appellants, there is ample evidence in the record to support the judgment of the Commission that the different tolerances are warranted for eggs packed at rail points of origin and for those packed at other than rail points of origin.

The railroads respectfully submit that the Commission had substantial evidence before it, made the findings of fact necessary to support its conclusions, and that those conclusions are not in any way in violation of law. The Commission is not compelled to annotate to each finding the evidence supporting it—*United States* v. *Pierce Auto Lines*, 327 U. S. 515, 529. The law in such circumstances is clearly set forth in *Western Paper Makers' Chemical Co.* v. *United States*, 271 U. S. 268, where the following appears at pages 270-271:

"The objections as presented here in brief and argument were addressed mainly to the soundness of the reasoning by which the Commission reached its conclusions. It was urged that these are inconsistent with conclusions reached by it in similar cases, that the findings are inconsistent with some views expressed in its reports in this proceeding, that some evidence was improperly considered, and that inferences drawn from some of the evidence were unwarranted. These objections we have no occasion to discuss. The determination whether a rate is unreasonable or discriminatory is a question on which the finding of the Commission is conclusive if supported by substantial evidence, unless there was some irregularity in the proceeding or some error in the application of the rules of law. Skinner & Eddy Corporation *v.* United States, 249 U. S. 557, 562, 39 S. Ct. 375, 63 L. Ed. 772; New England Divisions Case, 261 U. S. 184, 204, 43 S. Ct. 270, 67 L. Ed. 605."

To the same effect are *Illinois Central R. Co.* v. *Interstate Commerce Commission*, *supra*, at page 466; *Virginian Ry.* v. *United States*, 272 U. S. 658, 663, and *Interstate Commerce Commission* v. *Inland Waterways Corp.*, 319 U. S. 671, 691.

CONCLUSION.

The Interstate Commerce Commission, upon its own motion, has investigated the intolerable situation created by damage claims for shipments of shell eggs. It has held extensive hearings incorporated in a voluminous record. That record has been analyzed and contentions based upon it have been presented not only to the full Commission which has unanimously reached the conclu-

sions assailed in this proceeding, but those conclusions have been tested and approved by the court below, after further briefs and arguments. It is respectfully submitted that the decision below was correct and that it should be affirmed.

Respectfully submitted,

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William F. Zearfaus,
Attorneys for Intervening Railroads,
Appellees.

September 22, 1955

APPENDIX A.

Excerpts from the Interstate Commerce Act
(49 U. S. C. A.).

Section 1 (6):

"It is hereby made the duty of all common carriers subject to the provisions of this part to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this part which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this part upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful."

Section 6 (1):

"That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been estab-

lished, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this part."

Section 13 (2):

"Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this part, or concerning which any question may arise under any of the provisions of this part, or relating to the enforcement of any of the

provisions of this part. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this part, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Representatives of State commissions sitting with the Commission, under the provisions of this section, in cases pending before the Commission, shall receive such allowances for travel and subsistence expense as the Commission shall provide."

Section 15 (1):

"That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and

what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed:"

Section 20 (11):

"That any common carrier, railroad, or transportation company subject to the provisions of this part receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States

to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier, railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Com-

merce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this part to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary livestock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court, only in a State through or into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice: *And*

provided further, That for the purposes of this paragraph and of paragraph (12) the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this paragraph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this part provided."

APPENDIX B.

DAIRY PRODUCTS:

Eggs, noibn, see Notes 5, items 14560-A to 14589 and 6, item 14590:

In packages complying with specifications for package 512 or 893, see Notes 7, 8, 9 and 10, incl., items 14595, 14600, 14601 and 14602.

In packages not complying with specifications for package 512 or 893, or not complying with requirements of Notes 8 and 9, items 14600 and 14601, see Note 10, item 14602.

Note 5.—Special regulations governing descriptions, marks, inspection and delivery of eggs, and the handling of claims thereunder.

Section 1.—Shippers of eggs must place the following information on shipping order and bill of lading:

(a) Total number of packages.

(b) Type of package (wooden or fibreboard) and number of each type and capacity.

(c) Number of packages that do not contain full number of eggs for which the package is intended, and the actual extent of such shortage.

(d) Number of packages entirely containing checked, cracked, stained or dirty eggs.

Section 2.—Upon arrival of shipment at point of delivery, the consignee or his authorized representative shall have the privilege of opening each package, at no expense to the carrier (see Section 8), and of initially examining the contents thereof; provided, however, on notice by the carrier, such initial examination shall be in the presence of the carrier's representative. If any package contains eggs having

shell damage for which the carriers may be deemed responsible, the contents of such package shall be jointly inspected by the consignee and the carrier, or their authorized representatives. Any damage to the eggs shall be jointly recorded by the consignee and the carrier, or their authorized representatives, and such joint record shall be conclusive as to the nature and extent of damage.

Section 3.—The examination by consignee and joint inspection by consignee and carrier, provided for in Section 2 of this Note, shall be made before the shipment is removed from carrier's possession, except where the carrier agrees that the joint examination, or both the examination and joint inspection, may be made elsewhere and within a specific period of time after actual delivery of the shipment by the carrier into possession of consignee or his designated agent. The carrier shall have the right to place identifying marks upon any package to be inspected.

Section 4.—Upon the discovery of eggs deteriorated by heat, cold or wet in any shipment, not later than twenty-four (24) hours after delivery, the consignee shall be entitled to a joint inspection of the entire contents of the shipment to determine the damage from such causes.

Section 5.—On consignments of eggs where order bills of lading are indorsed to allow inspection, such inspection will be permitted only for the purpose of ascertaining the quality or grade of the contents of the packages.

Section 6. On eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 3% of the contents of the packages containing damaged eggs. Where damage exceeds

3%, claims shall be allowed for all damage in excess of 3%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 2%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 3% specified in this Section.

Section 7.—On eggs placed in packages at points other than the rail point of origin, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 5% of the contents of the packages containing damaged eggs. Where damage exceeds 5% claims shall be allowed in excess of 5%, if investigation develops carrier liability.

Exception.—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 4%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 5% specified in this Section.

Section 8.—No expense incurred by consignee in the ascertainment of damage will be allowed. In case of carrier liability, actual and necessary charges incurred for labor and material, as verified by carrier representative, in reconditioning each package in which verified damage exceeds the percentages stated or otherwise provided for in Section 6 or Section 7 of this Note, whichever is applicable, shall be borne by the carrier. If, by reconditioning any damaged package or contents, there shall result an enhanced value because of such reconditioning of such package

or contents, such increased value shall be credited to the claim.

Section 9.—Where the application of percentages stated or otherwise provided for in Section 6 or Section 7 of this Note result in fractions of one egg, such fractions shall be increased to the next whole number.

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SEP 2 1955
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 6

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE COMMISSION, ET AL.

No. 7

UTAH POULTRY & FARMERS COOPERATIVE, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 11

SECRETARY OF AGRICULTURE OF THE UNITED STATES, APPELLANT

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 12

UTAH POULTRY & FARMERS COOPERATIVE, ET AL., APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

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Washington, D.C.

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BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The majority and dissenting opinions of the specially constituted district court of three judges is reported at 119 F. Supp. 846 (R. 105-144). The

report of the Interstate Commerce Commission, involved herein (R. 11-52), is reported at 284 I.C.C. 377.

JURISDICTION

The final decree of the district court was entered May 7, 1954 (R. 149). The petition for appeal in No. 6 was allowed on May 7, 1954 (R. 150), and the petition for appeal in No. 11 was allowed on June 8, 1954 (R. 159, 160).[1] The jurisdiction of this Court is invoked under 28 U.S.C. 1253 and 2101(b). Probable jurisdiction was noted October 14, 1954 (R. 1288).

QUESTIONS PRESENTED

1. The principal question presented is whether tariff provisions approved by the Commission, containing a tolerance rule applicable to damage claims on shell eggs, are limitations of carrier liability which are prohibited by section 20(11) of the Interstate Commerce Act (49 U.S.C. 20(11)) and:

(a) whether shell eggs come within the meaning of the "inherent vice" exception to the strict common carrier liability with respect to loss or damage to property where the carrier is free from negligence and the damage arises solely from the nature and inherent character of the property;

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[1] The appeal taken in No. 6 from the District Court's opinion of March 10, 1954, as a precautionary measure and supplemented by the timely appeal from the final decree, should be dismissed.

2. Another question presented is whether the Commission's decision and order, approving damage tolerances for shell eggs, are supported by adequate findings and substantial evidence?

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act involved are set forth in Appendix A hereto.

STATEMENT

This is a direct appeal from a final judgment of a specially constituted District Court, sustaining a report and order of the Interstate Commerce Commission issued in a proceeding entitled No. 20030, *Special Regulations, Eggs* (R. 11).

The Commission proceeding was instituted on its own motion by an order dated July 23, 1948. The purpose of the proceeding was to conduct an investigation into and concerning the reasonableness and otherwise lawfulness of the special regulations, then in effect,[2] governing the description, marks, inspection and delivery, and the handling of claims thereunder in connection with the interstate transportation of shell eggs, with a view to making findings in the premises and prescribing

[2] These regulations provide in section 6 thereof (R. 49) that:

In connection with shipments of eggs, except storage packed eggs, storage packed dirties, and rehandled and repacked eggs, if not more than five percent (5%) of the eggs are damaged, no claim will be allowed. Where damage exceeds five percent (5%), claims shall be allowed for all damage in excess of five percent (5%) if investigation develops carrier's liability.

reasonable rules, regulations, and practices as the facts and circumstances warranted (R. 65).

The special regulations above referred to (R. 46-49) were included in tariffs which were already on file with the Commission and were contained in Note 5 of Supplement No. 2 to Consolidated Freight Classification No. 18, Agents A. H. Greenly's I.C.C.-O.C. No. 62; Robert E. Boyle's I.C.C. No. 106; Geo. H. Dumas' I.C.C. No. 31; and R. G. Raasch's I.C.C. No. 642 (R. 65).

The regulations in effect prior to July 23, 1948, were approved by the Commission in 1919 (R. 13, 15), section 6 of which is identical to section 6 of the regulations which became effective July 24, 1948 (quoted in footnote 2, *supra*) (R. 43-45).

All common carriers of property by railroad parties to the tariff schedules under investigation were made respondents in the Commission proceedings (R. 13).

Extensive hearings were held before Commissioner Richard F. Mitchell of the Commission, including two hearings at Chicago, Ill., one at Washington, D. C., one at Brooklyn, N. Y., and one at Los Angeles, Calif. At these hearings witnesses for the railroads, the Department of Agriculture, the Defense Department, various egg producing organizations and shippers appeared and introduced voluminous testimony and numerous exhibits. Following the hearings, briefs were filed by counsel representing the various parties to the proceedings.

During the course of the hearings the railroads published tariff schedules (to become effective May 12, 1950), containing new regulations changing in certain respects those then under investigation. Upon protest by the Department of Agriculture, the Department of the Army, and other agencies and organizations, the operation of the new regulations was suspended in Investigation and Suspension Docket No. 5792, entitled *Damage Tolerance on Shell Eggs* (R. 50-52).[3] That docket was consolidated with Docket No. 30030 and both were heard and decided on a common record (R. 12).

Following the hearings a proposed report was prepared and issued by two Commission examiners

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[3] These new regulations filed by the railroads, and suspended by the Commission provide (R. 51):

> Section 6.—On eggs placed in packages at rail point of origin of the shipment, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 4% of the contents of the packages containing damaged eggs. Where damage exceeds 4%, claims shall be allowed for all damage in excess of 4% if investigation develops carrier liability.
>
> Section 7.—On eggs placed in packages at points other than the rail point of origin, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 6% of the contents of the packages containing damaged eggs. Where damage exceeds 6% claims shall be allowed in excess of 6%, if investigation develops carrier liability.

Exceptions to Sections 6 and 7 provide for acceptance of certificates of Federal or State egg inspection agencies showing damages at rail-point of origin, at the amount of damages plus 1 percent, where actual damage shown is other than 3 percent under Section 6, and is other than 5 percent under Section 7.

recommending that the Commission find that the then existing 5 percent tolerance rule on eggs, other than those rehandled and repacked at the rail point of origin, was not shown to be unreasonable or otherwise unlawful, and that the proposed tolerance of 4 percent on eggs packed at the rail point of origin and 6 percent on those packed at other than rail points of origin, had not been justified, but that tolerances of 3 and 5 percent, respectively, would be justified. The examiners also recommended that the railroads should be directed to cancel the suspended schedules without prejudice to the filing of new schedules in conformity with the findings recommended. (R. 1048) Exceptions were filed to the examiners' proposed report and oral argument was heard before the entire Commission. (R. 12)

Thereafter, on February 4, 1952, the report and order of the entire Commission were entered, which discontinued the original proceeding and required the suspended schedules to be cancelled without prejudice to the filing of new schedules in harmony with the findings contained in the report, *viz.*, that tolerances of 3 per cent on shell eggs packed at the rail point of origin, and 5 per cent on those packed at points other than rail points of origin, would be reasonable (R. 43). Petitions for reopening, reconsideration, and reargument were denied by the Commission on May 19, 1952 (R. 79). The railroad respondents then filed schedules, in conformity with the Commission's findings, which constitute the immediate cause of the present controversy. The schedules, which

have been effective since May 2, 1952, provide in pertinent part, as follows (R. 53, 1286-A):

> *Section 6.*—On eggs placed in packages at rail point of origin of shipment, no claim shall be allowed where the physical damage to the eggs at destination does not exceed 3% of the contents of the packages containing damaged eggs. Where damage exceeds 3%, claims shall be allowed for all damage in excess of 3%, if investigation develops carrier liability.
>
> *Exception.*—Where bona fide certificates of Federal or State egg inspection agencies showing extent of physical damage to eggs determined at rail point of origin of the shipment immediately prior to tender for rail transportation indicate the actual shell damage to be other than 2%, the percentage of actual damage as shown on such certificates, plus 1%, shall be used in lieu of 3% specified in this Section.

Section 7 of the tariff is similarly worded except that it applies a 5 percent tolerance to claims on eggs placed in packages at points other than the rail point of origin.

Appellant Utah Poultry & Farmers Cooperative, on January 29, 1953, filed suit against the United States of America and the Interstate Commerce Commission to set aside and annul the Commission's orders herein (R. 1). The Secretary of Agriculture intervened as a plaintiff and with leave of the court other parties also intervened as

plaintiffs (R. 80-82). The Commission filed its answer to plaintiffs' complaints (R. 87, 88) and the railroads, having been permitted to intervene as defendants, filed their joint answer seeking to uphold the Commission's order (R. 102). The United States filed its answer admitting "each and every allegation of the complaint" and praying that the court hold unlawful and set aside the order of the Commission (R. 84, 87). The United States also has joined the appellants in this appeal and seeks to have this Court reverse the decision of the court below and this Court, on October 14, 1954, noted probable jurisdiction (R. 12, 88).

THE REASONS FOR THE COMMISSION'S INVESTIGATION AND THE ACTION TAKEN IN THE CASE

Before entering into a discussion of the validity of the order we shall refer briefly to the reasons which compelled the Commission to conduct an investigation into loss and damage claims on the shipment of shell eggs.

It had come to the attention of the Commission, well in advance of the date of the order entering into the investigation, that claims by shippers for damages to shell eggs transported by the railroads in interstate commerce had increased to startling proportions.[4] The claims had increased, on a na-

[4] The problem of claims against railroads for damages to shipments of eggs had been before the Commission at various times for many years and never satisfactorily solved. *National Poultry, Butter & Egg Assn. v. N.Y.C. R.R.*, 52 I.C.C. 47 (1919).

tionwide basis, from approximately $110,000 in 1941 to $2,338,462 in 1947 (R. 38). Damage claim payments on shell eggs had increased more than 1800 percent since 1939 (R. 27). Such claims in 1947 were found by the Commission to be unusually high in relation to like claims on any other commodity (R. 25, 26). Despite the fact that the egg carload traffic originated in 1947 was only 0.02 percent of all carload traffic the claim payments for damage to eggs amounted to 1.91 percent of all claim payments. (R. 38) The Commission found that in 1947 claims were filed on 58.6 percent of all carloads of shell eggs delivered by railroads at New York, Philadelphia, Baltimore and Boston and, that over 50 percent of the total revenue accruing to the railroads on shipments of shell eggs to New York in 1947, was paid in damage claims on those shipments (R. 22-24).[5]

The railroads had tried to bring about improvement of the egg damage claim situation but had not been successful. They had conducted numerous experiments in packing, loading and handling but no practical method had been discovered as to how the damage found to exist in the egg cases at destination could be materially reduced. (R. 28, 29)

It readily will be apparent to the Court that the Commission was faced with the necessity of find-

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[5] The relative importance of New York as an egg market is revealed by the fact that it receives annually 6 million cases, as compared with 5 million at Chicago, the next largest market and one million each at Philadelphia, Boston, San Francisco, Los Angeles and Detroit, Mich. (R. 39).

ing a solution, if possible, to this very serious and difficult problem. That solution must be found, if at all, within the framework of the Interstate Commerce Act. The Commission could not avoid or evade its responsibility in a matter as important as this in view of the National Transportation Policy enunciated by Congress to "foster sound economic conditions in transportation and among the several carriers * * * to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the National defense." It hardly would be possible for the Commission to implement that policy unless it could approve a plan such as the tolerance rule here involved which "is consonant both with the needs of commerce and the demands of justice". *Luckenbach v. McCahan Sugar Co.*, 248 U.S. 139, 149.

It is respectfully submitted that the farmers and the poultry interests, the consumers, and all those in the various segments of our economy, have a vital interest in maintaining and preserving an adequate national transportation system. The Commission must consider all those interests and in accordance with its best judgment and in conformity with the law and the evidence determine what would be reasonable and just in the premises. In doing so the Commission could not, any more than the courts can, give any greater weight and consideration to the claims of the Department

of Agriculture, Department of the Army or the Department of Justice than to the claims of the other parties participating in this case. The Court below so held and further stated that "The Attorney General does not have authority to 'confess error' and thereby to dispose of the case." (R. 106-107). See *Interstate Commerce Commission v. Jersey City, et al.*, 322 U.S. 503, 523.

SUMMARY OF ARGUMENT

I

The order approving a tolerance rule applicable to damage claims on interstate shipments of shell eggs, by railroads, is within the authority conferred upon the Commission by the Interstate Commerce Act, 49 U.S.C., National Transportation Policy, preceding Sections 1, 301, 901, 1001; Sections 1(6); 6(1) 13(2); 15(1); and 20(11).[6]

The Commission has been given broad power under the Interstate Commerce Act to regulate interstate transportation. The restraint imposed by Section 20(11) of the Act is narrowly limited. The clause in this section which limits carrier liability for loss or damage "caused by it" is to be strictly construed. There is no requirement of the Act or the common law which makes a carrier liable for damages not "caused by it" when, as here, the damage is due to "uncontrollable forces." Common carriers, under the common law, had the right to make and enforce reasonable rules and regulations governing the conduct of their business. *Platt* v.

[6] Set out in Appendix A hereto.

Lecocq, 158 F. 723, 730-731; *United States* v. *Oregon Nav. Co.*, 159 F. 975, 979; *York Company* v. *Central Railroad*, 3 Wallace 107, 112 (70 U.S.)

The Commission's approval of the tolerance rule or regulation is not predicated on a limitation of carrier liability but rather upon the "inherent vice or nature" of the commodity. The regulations merely constitute tariff rules and practices designed to prohibit the railroads from paying claims for damages which are not attributable to their negligence but which result from the inherent nature of the commodity transported. The order does not in any way limit the liability of the rail carriers for damages caused by them.

II

Substantial evidence supports the order and findings upon which it rests. The evidence overwhelmingly supports the Commission's finding that shell eggs are highly perishable and fragile and, therefore, susceptible to damage. Also, that it is not possible to handle eggs without causing some damage to the shell. Based upon special studies made by appellant Department of Agriculture it is shown that there is a tolerance in the grading of eggs because it is not humanly possible to remove from any lot of eggs, even in the handling or grading process, all that are defective; also, that there is a normal expectancy of shell damage in every car that is loaded, and that a checked egg is a potentially dangerous and risky egg from a transpor-

tation standpoint. (R. 342-343, 346, 351, 241 (Pl. Exs. 22-23; R. 1127-1136). The evidence shows that the normal expectancy of damage starts at the nest, and dependent upon the strength of the shell, continues progressively until the egg is used by the consumer (R. 241).

The evidence supports the Commission's finding that a tolerance rule of 5 percent on eggs rehandled or repacked at points other than rail points of origin, and of 3 per cent tolerance at rail point of origin, has been justified and would be reasonable. The evidence shows that on the basis of studies made by the Department of Agriculture at the request of the Commission (R. 365) 4 per cent of the eggs as delivered by producers and sold to the first buyers are in "checked" condition (shell cracked but membrane unbroken), and that an additional 1 percent becomes checked while traveling from the first buyer to the second buyer; that on midwestern eggs, arriving at the car-lot assemblers plant in midwestern states, or on reaching the wholesalers in the northeast, approximately 5 percent would be in a checked condition; and that in addition to this 5 per cent, there were approximately 12 percent more of the eggs which were stained and dirty (R. 371).

Based on a careful inspection by sampling cases of eggs contained in carload shipments, immediately prior to loading in railway cars at points of

origin, and a re-inspection of the identical cases at destination, the evidence showed that there was a total of 1.7 percent more damage found in the cases at destination than at rail origin, which damage is due to the inherent nature of the eggs. This evidence supports the finding that 1 percent of the eggs was damaged during rail transportation due to their inherent nature which formed the basis of the Commission's approval of the tariff rule providing that where bona fide certificates of Federal and State inspection agencies, showing the extent of actual damages determined at rail origins, there will be added to such damage 1 percent to cover damage in transit due to their inherent nature.

The contention that the tolerance regulation approved by the Commission is nationwide in its application, while the evidence presented related largely to the damage claims in official territory, particularly in the New York City area, does not affect the validity of the order, for the reason that a shipper whose eggs are not damaged suffers no injury. The evidence shows that most of the damage to the eggs already exists at origin before they are received by the railroads. Therefore, the damage is there irrespective of the destination of the shipment. In any event expert witnesses for the Department of Agriculture testified that the studies made by that Department included not only carload shipments of eggs from the Midwest and the South, but also covered 737 cars from all parts of the country.

III

The practice of applying a tolerance rule on shipments of freight is not new. The Commission approved, as early as January 12, 1919, a tolerance rule in connection with damage claims on eggs, which was the same kind of a rule as applied here, and it remained in effect for more than a third of a century without being attacked. Even before that the Commission approved tariff rules with respect to grain allowing for deductions from damage claims certain percentages for loss due to natural shrinkage. Since then there have been thousands of tariffs filed with the Commission providing for tolerances on various commodities for the purpose of adjusting claims for loss due to weight inaccuracies, moisture, evaporation, precipitation, and natural shrinkage attributable to the inherent nature of the commodity.

IV

The Department of Agriculture and the Department of the Army have adopted tolerance rules in the grading of eggs and have recognized that due to the inherent nature of this commodity, there is a normal expectancy of shell damages not only in the grading and packing of eggs but also in their transportation. An expert witness for the Department of Agriculture testified that he was "very definitely" of the opinion that there should be a tolerance on shell eggs shipped into New York. (R. 357).

V

The courts have approved tolerance rules on shipments of various commodities as a method of removing from claims such damages as are not attributable to the carriers but arise due to the inherent nature of the commodity transported. *Leonard* v. *Pennsylvania R. Co.*, 15 F. Supp. 55; *Bronstein* v. *Baltimore & O. R. Co.*, 29 F. Supp. 837, 839, *Mitzer* v. *Pennsylvania R. Co.*, Ibid 840, 842-843; *National Distillers Products Corp.* v. *Companhia Nacional*, etc. 107 F. Supp. 65, 70.

ARGUMENT

I

The Commission's Order Approving a Tolerance Rule Applicable to Damage Claims on Interstate Shipments of Shell Eggs Is Within Its Statutory Authority and Is Not Violative of Section 20(11) of the Interstate Commerce Act

The court below found, and correctly so, that the Commission's action in approving a tolerance regulation applicable to shell eggs is within the congressional grant of authority. Congress has given to the Commission broad power to regulate all modes of transportation subject to the Act, and in its administration thereof it is required to recognize and preserve the inherent advantages of each with a view of fostering sound economic conditions in transportation among the several carriers (see National Transportation Policy, 49 U. S. C., preceding sections 1, 301, 901 and 1001). As also pointed out by the court below, Congress has imposed a re-

straint upon the railroads and upon the Commission alike under Section 20(11) of the Act which is narrowly limited. The clause in this section which limits carrier liability for loss or damage "caused by it" must be strictly construed.

The legislative scheme approved by Congress requires, Section 1(6), that the carriers in the first instance must establish, observe and enforce "just and reasonable classifications of property for transportation * * * and just and reasonable regulations and practices affecting classifications, rates, or tariffs"; Section 6(1) requires railroads to publish tariff schedules including any rules or regulations which in any wise change, affect, or determine any part or the aggregate of the rates or charges, or the value of the service rendered; and Section 15(1) authorizes the Commission, after full hearing upon a complaint, or on its own initiative, to determine whether any "regulation or practice" of any such carrier "is or will be unjust or unreasonable" or otherwise in violation of the Act. If the Commission so finds it is authorized "to determine and prescribe what will be the just and reasonable * * * regulation, or practice" thereafter to be followed.

There has been no deviation from the statutory provisions applicable to the proceedings in this case.

The question presented is one involving the jurisdiction of the Commission to determine whether a regulation or practice is reasonable and how this is affected by the interpretation of Section 20(11) of the Act, particularly the clause which

prohibits limitations of a carrier's liability for the full actual loss, damage, or injury to such property, "caused by it."

Section 20(11) of the Act constitutes the Carmack Amendment, enacted as part of the Hepburn Act of June 29, 1906 (34 Stat. 584, c. 3591), as amended by the first Cummins Amendment of March 4, 1915 (38 Stat. 1196, c. 176), the second Cummins Amendment of August 9, 1916 (c. 301, 39 Stat. 441) and includes several other amendments not important to the matters involved in this appeal.[7]

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[7] Prior to the Carmack Amendment, the rule of carrier liability, as enforced in both Federal and State courts, was either that of the general common law, as declared by this Court and enforced in the Federal Courts; or that determined by the supposed public policy of a particular state; or that prescribed by a state statute. *Adams Express Co. v. Croninger*, 226 U.S. 491, 504.

The Carmack Amendment enacted as part of the Hepburn Act of June 29, 1906, 34 Stat. 593, providing that no contract, receipt, rule or regulation should exempt a carrier from the liability thereby imposed, was brought about, in part at least, by the conflict in the decisions of the courts as to the extent of the liability of the initial carrier and the inconvenience to which shippers were subjected in proceeding against an intermediate or delivering carrier. This amendment did not forbid a carrier from limiting its liability to an agreed value made to adjust the rates. *Chicago, B. & Q. Ry. Co. v. Miller*, 226 U.S. 513. This Court held in *Missouri, K. & T. Ry. Co. v. Harriman Bros.*, 227 U.S. 657, that the liability imposed by the Carmack Amendment was that imposed by the common law, which could be limited or qualified by special contract, provided the limitation or qualification was just and reasonable, and did not exempt a carrier from loss or responsibility due to its negligence.

The first Cummins Amendment of March 4, 1915, 38 Stat. 1196-7, which amended the Carmack Amendment, made the

Within a short time after the first Cummins Amendment became effective the Commission was called upon to interpret its provisions in view of the many widely varying or diametrically opposed ideas expressed as to its effect. Following formal hearings conducted by the Commission on the subject a report was published in *The Cummins Amendment*, 33 I. C. C. 682, in which the Commission gave its interpretation of the amendment.

In speaking of its provisions the Commission stated, page 691, that it seemed clear that they were confined to "instances of loss, damage, or injury caused by the carriers." At page 693, it further stated that this amendment "clearly places upon the carriers liability for the full actual loss, damage, or injury to the property transported *which is*

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carrier liable for the full actual loss of property shipped, when caused by the carrier, regardless of any agreement or representation of the shipper, and had the effect of nullifying the whole system of released rates. *Adams Express Co.* v. *Darden*, 265 U.S. 265, 266.

The purpose of the second Cummins Amendment (Aug. 9, 1916, 39 Stat. 441) was to make the carrier assume full liability as it existed prior to the Carmack Amendment of 1906, so that when property was lost or damaged in the course of transportation under such circumstances as to make the carrier liable, recovery may be had for the full value, or on the basis of full value. (*Express Rates, Practices, Accounts, and Revenues*, 43 I.C.C. 510). It had the effect of permitting limitation of liability, or of the amount of recovery, and the establishment and maintenance under prescribed conditions, of rates dependent upon values declared by the shipper, or agreed upon in writing as released value. *Bills of Lading*, 52 I.C.C. 671.

The history of and various amendments to the Cummins Amendment is reviewed by this Court in *New York, N.H. & H. R. Co.* v. *Nothnagle*, 346 U.S. 128.

caused by them and it makes unlawful *any limitation of that liability, or of the amount of recovery thereunder.*" (Emphasis supplied.)

The Commission further stated (page 695) that after the effective date of the Cummins amendment:

> * * * A carrier * * * may not contract to limit its liability for loss or damage caused by it to the property. There is, however, no inhibition as to the limitation of the liability of a carrier for losses not caused by it or a succeeding carrier to which the property may be delivered. The amendment has expressly reapplied the limitation of the prior act with respect to loss or damage caused by the carriers chargeable therewith. It follows, therefore, that the interpretation applied to the act before it was amended is equally applicable to the amendment in so far as the latter affects the right of a carrier to establish rates conditional upon the shipper's assumption of the entire risk of loss attributable to causes beyond the carrier's control. From this it follows that, under the amendment a contract or a tariff may lawfully limit to a reasonable maximum the liability of a carrier for losses which it does not cause. * * *

The Commission had earlier made an interpretation of the Carmack Amendment of the Hepburn Act with respect to carrier liability "for any loss, damage, or injury to such property caused by it,"

in the case entitled *Released Rates*, 13 I. C. C. 550 (1908),[8] wherein it stated (p. 552) that:

> * * * The scope of this prohibition must turn largely upon the construction to be placed upon the word "caused." The word "caused" is not susceptible of a narrow interpretation—it is broad enough to comprehend all losses due to the carrier's misconduct, whether positive or negative in character. But it can not possibly be extended to cover losses due to causes beyond the carrier's control. We are necessarily driven to the conclusion, therefore, that the law places no restriction upon the carrier's efforts to exempt itself from liability for losses which occur without fault on its part. We are of opinion, in short, that in the absence of agreement or notice the carrier's liability is governed by the ordinary common-law rule; but that a stipulation for exemption from liability for losses due to causes beyond the carrier's control is open to no legal objection.

In *Crouch Grain Co.* v. *A., T. & S. F. Ry. Co.*, 41 I. C. C. 717 (1916), the Commission, relying upon its decision in the *Released Rates* case, stated that the rule fixing an amount of tolerance for the natural shrinkage of grain does not violate the inhibition clause of the statute. Furthermore, the Commission said, "the law in this respect was not altered by the so-called Cummins amendment" and

[8] This case was cited with approval by this Court in *Adams Express Co.* v. *Croninger*, 226 U. S. 491, 512.

that a tariff rule published by a carrier providing for a tolerance on grain fixing "liability to losses actually caused by it," is not violative of the act to regulate commerce, or any amendment thereof (p. 718). This decision was based on the finding in the case that the limitation of the rule "is not against losses caused by the carrier or its connections, but rather against liability for losses due to the inherent nature of the commodities themselves and attributable to no human agency." (pp. 717-718).

As we have already shown, the Carmack amendment of June 29, 1906, made the initial carrier "liable for any loss, damage, or injury to such property caused by it," which is the identical language contained in the Cummins amendments heretofore discussed and embodied in Section 20(11) as it stands today. In its interpretation of the Carmack amendment in *Adams Express Co. v. Croninger*, 226 U. S. 491, this Court, in speaking of the liability imposed upon a carrier by that act, stated (pp. 506-507) that:

> * * * It is a liability to any holder of the bill of lading which the primary carrier is required to issue "for any loss, damage or injury to such property caused by it," or by any connecting carrier to whom the goods are delivered. The suggestion that an absolute liability exists for every loss, damage or injury, from any and every cause, would be to make such a carrier an absolute insurer and liable for unavoidable loss or damage though due to

uncontrollable forces. That this was the intent of Congress is not conceivable. To give such emphasis to the words, "any loss or damage," would be to ignore the qualifying words, "caused by it." The liability thus imposed is limited to "any loss, injury or damage caused by it or a succeeding carrier to whom the property may be delivered;" and plainly implies a liability for some default in its common law duty as a common carrier.

We desire to point out that the Commission does not claim that the Cummins amendment, contained in Section 20(11) as it presently stands, changed the common law rule in regard to proof of negligence in establishing carrier liability. (*Chesapeake & Ohio Ry. Co.* v. *Thompson Mfg. Co.*, 270 U.S. 416, 422.) Even under the common law, carriers were not absolute insurers and there never was a rule under the common law that made a common carrier liable in damage to property which existed at the time it was tendered to and received by the carrier for transportation (concealed damages) or which became damaged in transit due to its inherent nature. The rule under the common law specifically exempts a carrier for loss resulting from the inherent nature or vice of the property transported. The Commission's order here involved does not permit the carriers to avoid liability for loss caused by the carriers, but merely prevents them from being responsible for damage which they do not cause and which occurs due to one of the exemptions of the common law rule.

In *Chesapeake & Ohio Ry. Co. v. Thompson Mfg. Co., supra*, the shipper, in support of its claim for damages under the Cummins amendment, argued that every carrier receiving goods for carriage in good condition, and delivering them in bad condition is conclusively presumed to have been negligent and is liable for the damages resulting from its negligence, unless the injury was caused by an act of God, the public enemy, or the nature of the goods themselves; and that as the evidence did not show the damage was due to one of the excepted causes the carrier's negligence was to be conclusively presumed.

In regard to this argument, this Court stated (pp. 421-423) that:

> It is sometimes said that the basis of the carrier's liability for loss of goods or for their damage in transit is "presumed negligence." *Hall & Long v. Railroad Companies*, 13 Wall. 367, 372. But the so-called presumption is not a true presumption, since it cannot be rebutted, and the statement itself is only another way of stating the rule of substantive law that a carrier is liable for a failure to transport safely goods intrusted to its care, unless the loss or damage was due to one of the specified causes. [Citing cases.]
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> The respondent therefore had the burden of proving the carrier's negligence as one of the facts essential to recovery. When he in-

troduced evidence to show delivery of the shipment to the carrier in good condition and its delivery to the consignee in bad condition, the petitioner became subject to the rule applicable to all bailees, that such evidence makes out a *prima facie* case of negligence. *Miles* v. *International Hotel Co.*, 289 Ill. 320; *Miller* v. *Miloslowsky*, 153 Ia. 135; *Dinsmore* v. *Abbott*, 89 Me. 373; *Railroad Co.* v. *Hughes*, 94 Miss. 242, 246; *Hildebrand* v. *Carroll*, 106 Wis. 324. The effect of the respondent's evidence was, we think, to make a *prima facie* case for the jury. See *Sweeney* v. *Irving*, 228 U.S. 233; *Haines* v. *Shapiro*, 168 N.C. 34, 35; *Sims* v. *Roy*, 4 App. D.C. 496, 499. But even if this "*prima facie* case" be regarded as sufficient, in the absence of rebutting evidence, to entitle the plaintiff to a verdict (*Buskwell* v. *Fuller*, 89 Me. 600, 602, 603; *Cogdell* v. *Railroad*, 132 N.C. 852) the trial court erred here in deciding the issue of negligence in favor of the plaintiff as a matter of law. For the petitioner introduced evidence of the condition of the cars from the time of shipment to the time of arrival, which persuasively intended to exclude the possibility of negligence.

The instant case is even stronger than that case for the reason the stoves there delivered to the carrier were in good condition. In the instant case, eggs are in a damaged condition when delivered to the carrier due to their inherent nature. The tolerance rule here is the only practical way of eliminat-

ing claims for damages for which the railroads are not liable. The rule would avoid a multiplicity of suits and avoid a lack of uniformity of court decisions in such cases.

It thus would appear that the holdings of this Court are to the effect that despite the common law rule making common carriers liable as insurers, except in one of the specified causes, such rule does not include damage that exists to the goods prior to time the carrier receives them (concealed damages) or that which occurs during the course of transportation due to the inherent nature of the goods. The court below, in dealing with this situation, held (R. 125):

> The restraint imposed upon the carriers and the Commission by Section 20(11) of the Act is not broad, but is in terms narrowly limited. That section refers to carrier liability for any loss, damage or injury, "caused by it." Neither the Act nor the common law makes the carrier liable for damage which it does not cause. A statute which purported to do so would present serious constitutional questions. The liability which the carriers and the Commission are forbidden by Section 20(11) to limit is a liability for damage caused by the carrier.
>
> Hence, on the one hand power is granted the carriers and Commission in the broadest terms, while on the other hand the restraint upon their power is couched in carefully restricted language.

> To deny the Commission authority to do what it here has done is to drop out of Section 20(11) of the Act, the restrictive language "caused by it" and to limit the broad grant of powers which the United States Supreme Court consistently has recognized that the Commission possesses. To strike the tolerance regulation down requires us to go a long way. Surely it is hardly to be said consistent with well accepted principles of statutory construction.

The legislative history of the Act reveals no intent by Congress to make carriers liable for inherent vice in goods shipped.[2]

The Commission approved tolerance rules for application to damage claims to eggs, similar to

[2] A study of the legislative history of the Act reveals that it was the object of Congress in enacting the Cummins Amendment to make carriers engaged in interstate commerce liable for the actual loss, damage, or injury to such property *caused by them*. Senate Report No. 407, 63d Cong., 2d Sess., Act approved March 4, 1915, (Public No. 325, 63d Cong.)

During the debate on what ultimately became the "Cummins Amendment" of March 4, 1915, 38 Stat. L. 1196, it was proposed by Senator Smith of Georgia that the word "caused" [by it] be deleted and the word "transported" substituted in lieu thereof. Senator Sutherland thought the change unwise because it would "extend the liability of the carrier to the cases which were excepted by the common law; that is, the carrier under that sort of an amendment would be liable for " " " inherent defects of the goods, and those things recognized by the common law as constituting exceptions to its liability." (51 Cong. Rec. 9778.) Thereupon, Senator Smith withdrew his proposed amendment. This clearly indicates the attitude of the senate not to make carriers liable for inherent defects in goods shipped.

those here in question; more than 30 years prior to the proceedings herein. They were never questioned in court. Acceptance of such rules and regulations for so long a period of time would seem to constitute a concession on the part of appellants that the rules are not violative of Section 20(11).

It is, therefore, respectfully submitted that the Commission's interpretation of the statute in this respect for over a third of a century is a reasonable one which should not be overturned lightly. It has repeatedly been held that the interpretation of an act by the agency charged with its enforcement is entitled to great weight. See, for example, *United States* v. *American Trucking Ass'ns.*, 310 U.S. 534, 549; *United States* v. *Missouri Pacific R. Co.*, 278 U.S. 269, 280; *United States* v. *Alabama R. Co.*, 142 U.S. 615.

From the foregoing it is believed clear that the tolerance rule here involved does not violate Section 20(11) of the Act or any other applicable statute.

II

The Commission's Finding That the Tolerance Regulations Under Review Are Merely Tariff Rules and Practices Designed to Prohibit Carriers From Paying Claims on Eggs Which Were in a Damaged Condition at the Time They Were Received by the Carriers for Transportation, Is Supported by Substantial Evidence

The Commission found (R. 18-19) that the railroads are "not attempting by the proposed regulations to limit carrier liability", since "they are directed against loss due to the inherent nature

of shell eggs", and that the regulations "constitute merely tariff rules and 'practices' designed to prohibit the carriers from paying claims for damage which are not attributable to their negligence but which result from the inherent nature of the commodity transported." (R. 40.)

It is, therefore, perfectly obvious to any one reading the report that the Commission's approval of the tolerance rule, here involved, is predicated on the "inherent vice or nature" of the eggs rather than on a limitation of common carrier liability. Since this issue of this case is deeply rooted in facts, it is believed necessary to refer to the testimony of witnesses taken at the hearings, which shows that the eggs here involved come within the inherent vice rule of the common law.

The evidence, as we shall see, shows that the regulations do not exempt the carriers from any damage for which they would be liable under the provisions of Section 20(11) of the Act, or under the common law.

The evidence of record presented by the witnesses for the railroads (R. 241, 261) and the Department of Agriculture (R. 362) proves conclusively that eggs are highly perishable and fragile and, therefore, susceptible to damage.

Furthermore, the evidence is uncontroverted that it is not possible to handle eggs without causing some damage to the shell (R. 262). The chief of the Dairy & Poultry Inspection and Grading Division, Production and Marketing Administration, United States Department of Agriculture,

testified it was "humanly impossible" to pack a case of 100 percent sound eggs, and that, based on 27 years experience in the handling of eggs he had never seen a perfect car (R. 343, 346).

Also because of the fragile nature of shell eggs and their susceptibility to damage in handling, this witness testified that "There is a tolerance in the grading of eggs, * * * because it is not humanly possible to remove from any lot of eggs in the candling or grading process, all defective eggs," including cracked eggs. (R. 342). Thus, the United States Department of Agriculture has prescribed tolerance rules in the grading of eggs.[10]

The witness also testified that there is a normal expectancy of shell damage in every car that is loaded with eggs (R. 346), and that a checked egg is a potentially risky egg from a transportation standpoint (R. 351).

This same witness stated that he "very definitely" thought that there should be a tolerance placed on shell eggs shipped into New York (R. 357). He further stated (R. 345) that under the rule then in effect in New York, which allows a consignee to examine 20 cases of eggs and if a single egg is found to be cracked, in any one of the 20, then a check may be made of the whole car,

[10] The tolerance prescribed (Pl. Exs. 20 and 21, R. 1122-1125) allows 7.5 percent on grade AA eggs; 11.7 percent on Grade A, and similar tolerances on grades B and C eggs. The witness testified that under the Department's rules on tolerance he would permit the packing of cracked eggs in cases within the tolerance allowed for the particular grade (R. 345). The tolerances "are set up primarily for the purposes of making allowance for human error" and apply to eggs at the retail level (R. 342-343).

was a "very impractical approach" to the egg damage problem (R. 345, 356).[11]

The Chief of the Research Division of the Poultry Branch, Production and Marketing Administration of the Department of Agriculture in testifying from two studies (Ft. Exhibits 22 and 23; R. 1127-1136), compiled by that Department pursuant to a request from the Interstate Commerce Commission (R. 362, 369) for data that would be helpful in reaching a conclusion as to the very problem involved in the instant case, stated that approximately 1 per cent of the eggs as delivered by producers and sold to the first buyers are in "checked condition" (shell cracked but membrane unbroken) and that an additional 1 per cent became checked while traveling from the first buyer to the second buyer. Further, he said that on Midwestern eggs, arriving at the car lot assembler's plant in Midwestern States or on reaching the wholesalers in the Northeast, approximately 5 per cent of them would be in a checked condition (R. 365). He also stated that in addition to this 5 per cent there were approximately 12 per cent more of the eggs which were stained and dirty (R. 371).

Further testifying this witness stated that the eggs are reworked and repacked at the packer's plant and that when they leave the shipping plant they show that 3.3 per cent were in a checked and stained or dirty condition (R. 371). These figures

[11] Another witness for the Department testified (R. 651) that "If the railroad did not create the damage they should not be called upon to pay it."

were based upon the Department's study of eggs shipped in railroad cars from midwestern shipping points to coastal destination points in 1948. The study included a careful inspection of 115 carloads, made at points of origin "as they were to be loaded into railway cars." (R. 363). The results of the study showed that the shell damage to the eggs, prior to rail movement, was 1.9 percent checks, 1.4 percent stains and dirties, and 0.1 percent loss, a total of 3.4 percent damage, or "3.4 [percent] normal expectancy." (R. 371).[12] The 115 cars referred to were delivered to points on the

[12] The witness stated that the 115 sample cars thus inspected were marked at the point of inspection (point of rail origin) and the same cases and the same eggs were reinspected at destination (R. 363). The results of the reinspection of the cases at destination showed that instead of containing 1.4 percent stains and dirties, 1.9 percent checks, and 0.1 percent loss (as when loaded into the cars at the rail origin point), they contained 2.1 percent stains and dirties, 2.7 percent checks, and 0.3 percent loss, or a difference of 0.7 stains and dirties, 0.8 percent checks, and 0.2 percent loss, or a combined total of 1.7 percent damage attributable to rail transportation of which 1.5 percent was for checks and stains and dirty eggs. (Pl. Ex. 22; R. 1130).

The examination of eggs at origin and destination consisted of a "complete candling at both points." The tests were conducted by qualified Department of Agriculture inspectors. The cases examined were those which were "in apparent good order at destination." (R. 474). The witness stated that the results of the inspection of the 115 cars, above shown, are "supported by approximately 8,000 additional cars," all of which were "rail tests." (R. 475). In expressing confidence in the damage percentages shown as to the 115 cars, the witness referred to 737 cars on which inspection reports had been made which agreed with the findings on the 115 cars, and then stated: "That gives me confidence to a certain extent that the figures on the 115 cars are rather representative." (R. 364).

east, Gulf, and west coasts, including 12 cars which were delivered to New York City. (R. 363, 475).

The study made by the Department of Agriculture of the 115 cars dealt with origins of shipments in the midwestern states. However, another study was made by it with respect to shipments of eggs from all parts of the country. (Pl. Ex. 22, R. 1129, 370.) This study covered 737 cars and shows that checked eggs at origin averaged 1.9 percent, stains and dirties 1.8 percent and loss 0.2 or a total of 3.9 percent. The witness stated that he believed that the studies conducted would be typical of egg production in the entire country, and that the studies show there is a "normal expectancy" of 3.4 percent (R. 371).[13]

The evidence introduced by the railroads in the Commission proceedings, based on studies conducted by them of the nature and extent of damages to shell eggs at the point of origin of the rail shipments in Indiana, showed that inspections which they made of 74 cars in 1947 and of 30 cars in 1948, contained 2.2 and 3.2 percentage of damage respectively and that on 22 cars inspected between December 4, 1948 and February 2, 1949, the per-

[13] The witness for the Department, Mr. Henry G. F. Hamann, immediately preceding this witness, also testified that there is a normal expectancy of shell damage in every car that is loaded with eggs (R. 346). Mr. Hamann also testified that approximately 10 percent of all eggs produced in the United States are graded by the Department (R. 331), and that the certificates issued by the Department at the time of the grading reveal that there is a normal expectancy of shell damage at origin (R. 346).

centage of damage discovered amounted to 2.8 percent. The study further revealed that the percentage of damage found in cars inspected in Iowa during 1947 and 1948 amounted to 2.57 and 2.46 percent, respectively, while the damage found in cars inspected in Minnesota during the same two-year period amounted to 1.81 and 3.84 percent, respectively. (R. 240).[14]

In corroboration of its own findings that there exists at the rail shipping point shell damage of one kind or another in every car loaded with eggs, the railroad witness testified that a "recent" analysis of 1002 inspection certificates of the Department of Agriculture, reporting results of their inspections made at the shipping point, showed that of the 18,437 cases of eggs shipped in the 1002 cars, examined by the Department, that 3.04 percent of the natural eggs were found to be "checked and/or stained", and 3.22 percent of the processed eggs were found to be "cracked and/or stained" before rail transportation started (R. 240).

In his testimony regarding the damages to eggs before the rail movement commences, the railroad

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[14] An additional study was made by an agency of the railroads at shipping point in Iowa, during the period April 19 to June 30, 1949. This study consisted of an inspection of 15 cases of eggs out of each of 60 cars, containing from 400 to 600 cases, after they had been placed in the car at rail point of origin or while they were on the platform before being loaded in the car, and the examination of 100 eggs from each case. This study disclosed a total of 2,256 checked eggs, 483 stained and dirty eggs and 98 broken eggs, or a total of 2.61 percent. (R. 302). The examination of the eggs was by candling. (R. 303).

witness testified that the shell damage was due either to the fragile nature of the eggs, or to the handling in the candling and repacking operations, or to the handling of the cases incident to the loading of the car (R. 241). He said that a certain amount of shell damage is inescapable, and that this "normal expectancy of damage starts at the nest and, dependent upon the strength of the individual shell, continues progressively until the egg is used by the consumer". (*Ibid.*)

From the foregoing evidence, including that contained in the studies made and introduced by the Department of Agriculture, the Commission was warranted in making the finding that "eggs are highly perishable and fragile"; that the "principal cause to which shell damage prior to rail transportation is attributable is the fragility of the commodity" (R. 26); that eggs containing checks are "to a certain extent in a damaged condition", in that they are "defective or cracked"; that the "slightest movement in transportation may cause additional damage * * * which cannot be imputed to negligence of the carrier but rather to the inherent nature of the commodity"; that there is a "normal expectancy of shell damage in every car loaded with eggs; and that it is at least impractical to load a perfect car. (R. 32).[15]

[15] The Commission found from the evidence presented by the Department of Agriculture that of the eggs delivered at the packing plants, 5 percent of them contained checks, and after repacking and as loaded into the rail car they contain 4.9 percent checks (R. 31). It also found that the normal expectancy of shell damage to eggs occurring in rail transit

The tolerance regulations approved by the Commission in this case are tariff rules which relieve carriers from having to pay damages which they do not cause and which arise solely because of the inherent nature of the commodity transported. The question thus presented is one of fact upon which the Commission's findings will not be disturbed by the courts if supported by substantial evidence. *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U.S. 541, 547; *Virginian Ry. Co.* v. *United States*, 272 U.S. 658, 665; *Mississippi Valley Barge Line Co.* v. *United States*, 292 U.S. 282, 286.

With respect to the appellants' contention that the findings are not supported by substantial evidence on the record as a whole, it is respectfully submitted that this contention is wholly without foundation. From the foregoing discussion it will be seen that the uncontroverted evidence of record shows that shell eggs are highly perishable and fragile and susceptible to damage in handling (R. 241), and that it is not possible to handle them without causing some damage to the shell; also that it is not possible to remove from any lot of eggs, even in the candling or in grading process, all defective eggs (R.342) that checked eggs absorb moisture and the check or crack will widen with the

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from the midwest to New York, amounts to 17 percent as revealed by origin and destination inspections of the same egg cases. Also that similar inspections in 1948 of 737 carloads of eggs loaded at origin points throughout the entire country showed an average percentage of 19 checks, 18 dirties and 0.2 loss. (*Ibid.*)

passing of time (R. 346); that it is not humanly possible to pack a case of 100 percent sound eggs (R. 343, 349); that a checked egg is a potentially risky egg from a transportation standpoint (R. 351); that over 1 percent of additional damage occurs during the course of rail transportation due to their inherent nature (R. 363, Ex. 22, R. 1129-1130); that a certain amount of shell damage is inescapable, and this "normal expectancy" starts at the nest and, dependent upon the strength of the individual shell, continues progressively until the egg is used by the consumer (R. 211).

In regard to the contention of appellants that the damages to shipment of eggs resulted from the negligent handling by the railroads and not from the "inherent vice or the nature of the goods," the Commission's findings and the order entered in the proceedings do not in any way limit the liability of the carriers for any damages caused by them. The court below found that the Commission "does not base its approval of the tolerance rule, in whole or in part, upon any kind of limitation of carrier liability, but on the contrary, bases that approval upon a finding of fact that the regulations 'are directed against losses due to the inherent nature of shell eggs *rather than against losses caused by the carriers*.'"

In view of the above further discussion of the evidence as to damage caused by the carriers is not deemed necessary.

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The Railroads, With Commission Approval, for a Number of Years Have Provided Tolerance Rules in Tariffs, Serving as a Basis for Determining Either the Amount of Freight Charges to Be Collected or the Loss or Damage Resulting From Weighing Inaccuracies as Well as Natural Causes

The question of tolerance, as applied to transportation, is not new to the industry or to the Commission. Tolerance rules providing for the loss in transit of a fixed amount for the natural shrinkage of grain, in connection with the adjustment of claims for such loss, was approved by the Commission as early as 1915 in *Crouch Grain Co. v. Atchison, Topeka & Santa Fe Ry. Co.*, 36 I.C.C. 265. In that case the Commission approved tariffs of the railroads allowing deductions from claims for loss from natural shrinkage of 1/8 of 1 percent on wheat, flaxseed, rye, oats and barley, and 1/4 of 1 percent on corn. The Commission affirmed this approval on reconsideration in 41 I.C.C. 717.

In *Weight Tolerance Rule*, 192 I.C.C. 71 (1933), the Commission approved a railroad tariff providing for a tolerance for uniform application throughout the United States on all carload traffic, minimum of 500 pounds (no change was made in the then existing weighing rules and practices with respect to lumber, grain, seeds, hay, straw and screenings) of 1 percent, except on certain commodities loaded in open cars on which a tolerance was permitted of 1-1/2 percent. This tolerance was approved for the purpose of correcting inac-

curacies of weight upon which freight charges were assessed.[16] The Commission pointed out that the 1 percent tolerance on freight not subject to moisture changes was then in effect throughout the country and that there had never been any substantial complaint against it, except on coal in the Middle West. As to coal, it found a higher tolerance was justified, as well as on other open car freight, which is subject to substantial changes in weight due to evaporation or precipitation. The Commission further found that a tolerance of 1.5 percent or more applied at that time on two-thirds of the coal shipped throughout the country (pages 72-73). See also *Enel Sales Corp. v. Delaware, L. & W. R. Co.*, 225 I.C.C. 288.

There are thousands of tariffs on file with the Commission containing regulations providing for tolerances of various percentages applicable on numerous commodities, including grain, coal, seeds, hay, straw, brick, livestock, gasoline, and carload freight. The tolerances provided in such

[16] The Commission made an investigation of this subject in 1917 and issued a report (28 I.C.C. 7) as a result of which a code of rules governing the weighing and reweighing of carload freight was prepared and adopted by the American Railway Association and approved by the National Industrial Traffic League. The code was indorsed by the Commission and adopted by the carriers throughout the country, with a few minor exceptions. The code adopted the 1 percent tolerance on all freight, minimum 500 pounds, except on freight loaded in open cars the tolerance was made 1 percent with a minimum of 1,000 pounds. The Commission indorsed the rules, subject to the right to inquire into the legality and reasonableness thereof. This code is referred to by the Commission in its report in *Weight Tolerance Rule*, 192 I.C.C. 71, at pages 72-73.

tariffs are for the purpose of adjusting claims for loss due to weight inaccuracies, and also to loss due to moisture, evaporation, or precipitation, and natural shrinkage inherent in the commodity transported.[17]

The Commission's experience with the egg damage problem dates back as far as 1913 when the railroads filed tariffs with it, applicable to the metropolitan district of New York, containing rules and regulations which provided, in substance, that where cases of eggs are received by the carrier at the shipping point and receipted for as in apparent good order, and if they arrive at destination in the same apparent condition (showing no external evidence of damage), the consignee had no right to examine the content of the cases prior to delivery.

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17. Tariffs on file with the Commission include the following, which are representative of a vast number of such tariffs:

Illinois Central R.R. Co., I.C.C. No. E-1877, Item 60—Coal.

B. & O. R.R. Co., I.C.C. No. 23872, Rule 20—Grain.

Southwestern Lines Tariff No. 188-F, Agent Kratzmeir's I.C.C. No. 3962, Item No. 540—Livestock.

Agent Prueter's Eastbound Lumber Tariff I.C.C. No. 1531, Item 685—Lumber.

Federal Barge Lines, Inc., I.C.C. No. 45, Item 310—Grain and Soya Beans in bulk in bargeloads.

Phillips Pipe Line Company, I.C.C. No. 37, Item 25—Propane by pipe line. Deduction for evaporation.

B. & O. R.R. Co., I.C.C. No. 24079, Rule 8—Carload Freight.

Agent C. A. Spaninger's I.C.C. No. 1445—Carload Freight.

Agent W. J. Prueter's I.C.C. No. A-3899, Item 70—Carload Freight.

Agent W. J. Prueter's I.C.C. No. A-3970, Item 175—Celery.

but was required to give the carrier a receipt for the shipment as being in apparent good order. In *New York Mercantile Exchange* v. *B. & O. R.R. Co.*, 36 I.C.C. 156 (1915), certain consignees filed a complaint with the Commission seeking to have the above referred to tariff rules declared unjust, unreasonable and unduly prejudicial to the locality of New York and the egg merchants thereof. The Commission found from the evidence presented by the complainants that such rules and regulations were not unjust, unreasonable or unduly prejudicial.[18]

In *National Poultry, Butter & Egg Assn.* v. *N.Y.C.R.R. Co.*, 52 I.C.C. 47, decided January 21, 1919, the Commission approved a tolerance rule in connection with damage claims on shell eggs, which is the same kind of a rule as the one approved in the instant case. Under the rule approved in that case,

[18] In its decision in that case the Commission referred to the fact (p. 160) that the complainants admitted that it was impracticable to have a complete inspection of all cases of eggs arriving in the metropolitan district of New York, and that the complainants suggested that where external evidence of damage was not in evidence an inspection of from 10 to 15 cases per car of approximately 300 cases would suffice.

In reaching its decision that the challenged tariff rules were not unlawful the Commission considered and relied upon a report of an investigation made by an agent of the Food Research Division of the Department of Agriculture showing that in 61 experiments, conducted by that Department, there were 19.22 eggs per case of 30 dozen leaving the packing house that were partly damaged; that in addition to this number there were 11.28 eggs which could easily become No. 1 cracks because of defective shells as laid by the hen, or a total of 30.50 defective eggs in each case; and that breakage in transit averaged between 5.59 and 5.80 eggs per case. (P. 161.)

which remained in effect until July 24, 1948, consignees were permitted to lift the lids of 25 percent of the cases, not exceeding 20 in one shipment, and examine the top layers for damage. If damage to eggs was disclosed by such inspection, the rule permitted further examination of the top layers of the other crates selected by the consignee. All cases containing damaged eggs were set aside for reconditioning. Except as to "storage packed eggs, storage packed dirties, and rehandled and repacked eggs," if not more than 5 percent was damaged no claim would be allowed. However, if the damage exceeded 5 percent claims were allowed for all damage in excess thereof, if the examination developed carrier liability. In regard to the storage packed and rehandled and repacked eggs claims for actual damage would be allowed if carrier liability could be established.

Under the regulations which became effective July 24, 1948 (Appendix B to the Commission's Report, R. 46), provisions were made for inspection of shipments quite similar to those published pursuant to the Commission's findings in the *National Poultry, Butter & Egg Asso.* case. However, the tariff containing the regulation provided that the descriptions "rehandled and repacked" and "storage packed eggs" shall apply only to eggs rehandled and repacked, and graded and sorted at packing plants or storage warehouses located at point of origin of the rail shipment. The terms "current receipts" or "graded" applied to eggs

not complying with the foregoing descriptions.[19] These regulations afforded some measure of relief from the excessive claim payments but the claims received and payments thereof by the railroads continued to be inordinate.

In the instant case the tariff regulations filed by the carriers, pursuant to the Commission's decision and order which are here under review, are somewhat similar to the regulations of 1919 and 1948. These regulations (R. 1286-13) authorize the opening by consignees of each package in the shipment, as compared to the opening of not to exceed 20 cases under the former regulations. They add the 3 percent tolerance on eggs packed at rail point

[19] In the 1919 regulations "rehandled and repacked" and "storage packed eggs" on which claims for actual damages had been allowed, were not restricted to shipments handled and repacked, and graded and sorted at the point of origin of the rail shipment. Such described shipments could originate at points other than the point of the rail shipment and could be handled to that point by truck. As a result eggs not originating at point of origin of the rail shipment, but which previously had been included in the description "rehandled and repacked" and "storage packed eggs" were now included in the terms "current receipts" or "graded" eggs. If an examination of the top layer of 25 percent, with a maximum of 20 cases, showed 5 percent or less damage, it was considered complete and final for the entire shipment, and a good order receipt was required of the consignee. Under the July 24, 1948, regulations, claims for actual damage applied only on rehandled and repacked and storage packed eggs when such operations were performed at point of origin of the rail shipment. On eggs of all other descriptions the carriers were to pay no claims when the examination showed the damage was 5 percent or less. (R. 16, 43; Appendix A to the Commission's report.)

of origin, but retain the 5 percent which is made applicable on all eggs packed at off rail points. The regulations contain the further provision that the 3 and 5 percent tolerances do not apply when the shipper furnishes a Federal or State inspection agency certificate showing point of origin damage to be other than 3 and 5 percent, respectively. In such cases the percentage of actual damage as shown on the certificates, plus 1 percent to cover damage in transit due to the inherent nature of the eggs, shall be used.

It will be observed that under the 3 and 5 percent tolerance rule involved in this appeal that a shipper is not bound by the rule as he is given an alternative of having the exact amount of damaged eggs determined immediately prior to their delivery for rail transportation. The alternative thus afforded is similar in principle to the released value rule approved by the courts in numerous cases including *Adams Express Co. v. Croninger*, 226 U. S. 491, 509-512; *Missouri, K. & T. Ry. Co. v. Harriman Bros.*, 227 U. S. 657, 672; *Cincinnati & Tex. Pac. Ry. v. Rankin*, 241 U. S. 319, 327; *Union Pacific R. R. v. Burke*, 255 U. S. 317, 321; *Simmons Hardware Co. v. Southern Ry. Co.*, 279 F. 929, 932, certiorari denied 260 U. S. 739.

It is believed clear that the common law did not prohibit a shipper and a carrier from entering into an agreement whereby the carrier may exempt itself from losses not caused by it. In *York Company v. Central Railroad*, 3 Wall. 107, 113, and in *San Giorgio I v. Rheinstrom Co.*, 294 U. S. 494, 496, the Supreme Court held that a carrier may exempt

itself by contract from liability for damages which were not caused by it and were beyond its control.

IV

Tolerance Rules for Grading of Shell Eggs Have Been Employed for a Number of Years by the United States Department of Agriculture, the Department of the United States Army, and the Egg Industry

We have already pointed out p. 30, *supra*, the Department of Agriculture has adopted tolerance rules in the grading and inspection of eggs and has used such rules for a number of years. (R. 342). The producers and shippers of eggs likewise have adopted such a rule with respect to shell damages to eggs shipped by them (R. 241).

The Department of the Army also has adopted a tolerance in the inspection of eggs purchased by it, which is similar to that of the Department of Agriculture. (R. 406).[20]

[20] A witness for the Department of the Army testified that in the inspection by that Department, eggs purchased for export, designated as Quartermaster Market Grade I, (requiring 80 percent Grade A, with up to 15 percent Grade B) permits a tolerance of 5 percent which "can be stains, checks, leakers, broken eggs and loss." (R. 406). Another Army witness later testified that the 5 percent tolerance includes Grade C eggs, checks and stains, but no leaker loss is allowed after the price is fixed on the purchases, except a nominal loss of 3/10 to 5/10 of 1 percent. He also stated that on export eggs there is a stipulation that not over 3 percent of checks will be allowed at origin, or 4½ percent at destination. (R. 613).

On eggs purchased for domestic use requiring 60 percent Grade A, the Army permits a tolerance of 10 percent. (R. 406). The 5 percent tolerance on the higher grades allows for shell damage of 4½ percent checks and stains and ½ percent leakers (R. 407). "All eggs purchased by the Army are those that have been rehandled or repacked at the point examined." (R. 408).

The tolerance rules on eggs are predicated on their perishable and fragile nature and the recognition by the experts who deal in them that there is a normal expectancy of shell damage even in the grading and packing of the eggs, as well as in their transportation. The evidence before the Commission contained testimony that the normal expectancy of damage to eggs starts at the nest and dependent upon the strength of the individual shell, continues progressively until the egg is used by the consumer. (R. 241). Also in the grading and inspection of eggs it is impossible to eliminate every checked or cracked egg from a case. (R. 343). The evidence heretofore reviewed is uncontroverted that such damage exists in shell eggs even before transportation begins. It is significant that Henry G. Hamann, Chief of the Dairy and Poultry Inspection Division, Production and Marketing Administration, United States Department of Agriculture, stated that he was "very definitely" of the opinion that there should be a tolerance on shell eggs shipped by rail into New York (R. 357) and that its Mr. Shilt testified if the railroads did not create the damage they should not have to pay for it (R. 651).

V

The Courts Have Approved Tolerance Rules as a Uniform Method of Removing Damage Claims for Which the Railroads Are Not Responsible

The Commission found (R. 19) that the regulations governing tolerance on shipments of shell

eggs were established as a means of determining the amount of damage existing at the time the shipment is received by the carrier and the amount of damage resulting solely during transportation because of the inherent nature of the shipment. Therefore, where, as here, the evidence is conclusive that there is always a certain amount of damage to a shipment of eggs prior to (R. 240, 342-346, 351, 363, 370-371) and during the course of transportation (Pl. Ex. 22; R. 1130, 365) which cannot be avoided, it is necessary to establish a standard or a tolerance limit for which the railroads will not be held liable.

The courts have found that such a rule is not only reasonable and just, but is a practicable way of fixing liability for damages to shipments of goods.

Leonard v. *Pennsylvania R. Co.*, 15 F. Supp. 55 (D. C. S. D. N. Y.) (1936), involved alleged damages to a shipment of watermelons. The court, in passing on the question of railroad liability for damage to the shipment, found from the evidence in the case that from 90 to 95 percent of carload shipments of watermelons, loaded by the shipper in bulk in rail cars, showed a shifting of the cargo when transported for any considerable distance, resulting in some of the melons being bruised. It further found that the evidence showed a damage or loss in most cases was within 2 percent of the melons transported. The Court denied recovery in that case because the involved shipment came within this 2 percent tolerance (p. 56).

In *Bronstein* v. *Baltimore & O. R. Co.*, 29 F. Supp. 837 (D.C. E.D. Pa.) (1939), suit was brought to recover damages for injury to 76 carloads of watermelons transported from Georgia to Philadelphia. The evidence showed that although the melons had been carefully loaded by the shipper and were in good condition when placed in the cars, that upon arrival at destination every carload showed a certain amount of damage, consisting principally of cracks and bruises caused by jolting, jarring, bumping, stopping and starting of the cars during transportation. In the decision of the case, the Court stated (p. 839) that:

> Since both parties agree that when watermelons are loaded in bulk and transported by rail over long distances there will always be a certain amount of damage which can not be avoided even by the most careful handling, it is necessary to fix a norm or limit of tolerance, within which the presence of damaged melons in the cars will not amount to proof of negligence. * * *

In its disposition of the case the Court fixed a tolerance for ordinary non-negligent handling of the bulk shipments at 25 for the long, tougher type of melon and 40 for the round, more fragile type. *Ibid.*

On the same day that the court decided the *Bronstein* case it decided the case of *Meltzer* v. *Pennsylvania R. Co.*, 29 F. Supp. 840, in which it fixed the same amount of tolerance for damage to the ship-

ments of watermelons involved in the *Bronstein* case, stating (pp. 842-843) that:

> Another deduction will also have to be made. It is not possible to transport a carload of watermelons any considerable distance without some shifting of the load and some amount of damage. This must be taken into consideration, because it means that a certain amount of injury can not be charged to the defendant's negligence. I fixed this normal expectancy of limit of tolerance, in the Bronstein case at twenty-five for the long melons, and forty for the round ones. The testimony in this case is much the same and I will take the same standard. * * *.

One of the latest court cases fixing a tolerance rule, as a method of removing from claims damages for which the rail carriers are not responsible, is *National Distillers P. Corp.* v. *Companhia Nacional*, *etc.*, 107 F. Supp. 65 (D.C. E.D. Pa). (1952). In this case the Court found that the evidence established there is a normal shrinkage of wine, in wooden containers, and that an allowance of 2 percent for such shrinkage was proper and would be permitted in connection with a shipment of wine transported by the Reading Railroad Company from Philadelphia to Brooklyn, N.Y. (p. 70).

The order of the Commission in the instant case assures of uniformity in determining the limit of tolerance on damages to shell eggs which is in complete harmony with the purpose of Congress in delegating to the Commission the duty of securing

equality of rates. *New Haven R.R.* v. *Interstate Com. Com.*, 200 U.S. 361, 394.

It is submitted that one of the reasons Congress had in mind in the establishment of the Commission was to assure uniformity in the regulation of interstate transportation of carriers for hire. The egg tolerance rule approved by the Commission is consistent with that purpose.[21] It provides the only practicable method of determining the damages existing in the eggs prior to their transportation, and the elimination from claims the damages which are due to their inherent nature. It is a reasonable and just regulation and does not conflict with the statutory requirements and applicable decisions of the courts. It rests upon a reasonable and rational basis as the finding and evidence show.

VI

The Commission's Order Is Based Upon Adequate Findings Which Are Supported by Substantial Evidence on the Record as a Whole

Appellants contend to the contrary. (Br. Utah Poultry, p. 56).

In regard to the question of whether the findings are adequate, we respectfully submit that the Com-

[21] This Court held in *American Trucking Assns.* v. *United States*, 344 U.S. 298, 309-12, that the Commission has jurisdiction to issues rules and regulations to implement the purposes of the Act despite the absence of specific authority. *United States* v. *Pennsylvania R. R.*, 323 U.S. 612, 645. The Commission's knowledge and experience of transportation conditions, recognized by the courts, qualify it to determine the reasonableness of such regulations. *Rochester Tel. Corp.* v. *United States*, 370 U.S. 125, 128; *McLean Trucking Co.* v. *United States*, 321 U.S. 67.

mission has made all the findings that are necessary or that it could reasonably be expected to make in the premises. It is not believed necessary to make any detailed analysis of the findings since a casual reading of the Commission's decision will reveal that they are entirely adequate (R. 26, 31-32, 43).

1. It is contended (Br. Secretary of Agriculture, p. 34) that the facts found by the Commission "cast a cloud over its premise that tolerances provide a reasonable means of solving the problem of damage claims" to eggs because of (1) the difference in such claims on the eastern seaboard and elsewhere, and (2) the finding that similar claims are negligible for eggs transported by truck. This contention is based upon the finding in the Commission's report (R. 30) that the record "establishes conclusively that the damage claims on shipments of eggs to points in eastern seaboard territory, particularly New York, proportionately exceed in number and amount those at any other point in the country;" and the finding (R. 39), that "The record indicates that in the transportation of eggs by motor truck the amount of shell damage is negligible."

It is submitted that the above findings do not conflict with the other subsidiary findings made by the Commission or its ultimate finding that "tolerances of 3 and 5 percent, respectively, would be reasonable." (R. 43). The uncontroverted fact is that damage exists in shipments of eggs tendered to the railroads for transportation regardless of the intended destinations. As heretofore shown, the

Commission found and the facts show that the condition of a damaged egg never gets better, but worsens with handling and in transportation, and that such eggs cause damage to others which had been sound (R. 42). The fact that damage claims on egg shipments to points in the United States, other than to the eastern seaboard territory, were less than that at destinations in the latter territory, does not in any way conflict with other findings made by the Commission or detract from the reasonableness of the tolerance prescribed.

Neither does the finding that the record indicates the damage to shipments handled by truck is negligible, prove that the authorized tolerances are unreasonable. The circumstances surrounding the shipments by truck and the method of adjusting damage claims are different from those employed by the railroads. There are no rules of inspection (20 case rule) for motor carriers as applied to rail carriers. Motor carrier rules are not involved here.

2. In regard to the contention of appellant Secretary of Agriculture (Br. p. 37) that the Commission's finding as to damages resulting from "inherent vice" is not supported by any adequate finding or evidence, and is "directly contrary to the Commission's findings on the same subject in 1919", (*National Poultry, Butter & Egg Assn. v. N.Y.C.R. Co.*, 52 I. C. C. 47), it is submitted that such a contention is without merit. In any event the decision and findings in the instant case are based upon a different investigation and record. The

question here is: does the record in this case justify the findings. The Commission's judgment is to be exercised in the light of each individual case. The courts are not concerned with the Commission's reasoning or with the consistency or inconsistency of its decisions. *Western Chem. Co. v. United States*, 271 U.S. 268, 274; *Virginian Ry. Co. v. United States*, *supra*, 665.

3. In regard to appellants' contention (Br. of Secretary of Agriculture, p. 38) that the Commission's approval of a 1 percent tolerance to cover the normal expectancy of eggs damaged during the course of transportation (due to their inherent nature), is not predicated on any finding or evidence that such damage occurs, we respectfully submit that the Commission has made such finding which is supported by substantial evidence.[22]

In discussing the evidence of damages found to exist in specific carload shipments of eggs from Midwestern points and from points throughout the United States at the time the cases were loaded into the cars for transportation and the amount of dam-

[22] The 1 percent tolerance is based upon the tariff rule approved by the Commission which provides that where bona fide certificates of Federal or State inspection agencies showing the actual extent of damages to eggs determined at rail point of origin of the shipment (before transportation begins) there will be added to such damage one percent for further damage in transit, and the total thus computed may be deducted from the claim against the railroad for damages found to exist at destination for which the railroads might be liable.

ages found to exist in the identical cases at destination, the Commission found (R. 31) that:

> * * * a careful inspection made of the eggs as they were loaded into 115 railroad cars in 1948 and 1949 at points in the midwestern area, disclosed that they contained an average of 1.4 percent stains and dirties, 1.9 checks, and 0.1 designated as loss. The 1.9 percent checks were, however, found by candling and clicking, and could not be detected by the kind of inspection performed at New York. An examination of those identical shipments at destination showed respective damage of 2.1, 2.7, and 0.3 percent, reflecting increases of 0.7, 0.8, and 0.2 percent, respectively, incident to the movement in transit. Similar inspection in 1948, of 737 carloads of eggs loaded at origin points throughout the entire country, showed an average of stains and dirties of 1.8, checks of 1.9, and loss of 0.2 percent. The result of these inspections indicates an average damage of 3.4 percent at origin and 5.1 percent at destination, and typifies the character of eggs which are loaded into railroad cars at points of origin. It also establishes that there is a normal expectancy of shell damage in every car loaded with eggs, and that it is at least impractical to load a perfect car.

As hereinbefore shown, the evidence supports the above finding.

The regulations approved by the Commission

furnish the shipper an opportunity of showing the actual damage to eggs prior to the time the shipments are made, or as an alternative to be bound by the tolerance provided for in the tariffs. This is quite similar to the released value rule approved by the Court in *Pennsylvania R.R. Co.* v. *Hughes*, 191 U.S. 477, 478; *Adams Express Co.* v. *Croninger*, *supra*; *Adams Express Co.* v. *Darden*, 265 U.S. 265.

4. Perhaps a word should be said with respect to appellant's contention (Br. Secretary of Agriculture, pp. 16, 35) that the Commission's order is defective in that it has nationwide application while the greater part of the evidence and the findings relate to damages resulting to eggs shipped to destinations in trunkline territory (on the eastern seaboard), and particularly to New York. This contention was disposed of fully by the opinion below (R. 113) where the Court stated:

> It is not unjust to apply the regulation nationwide. A shipper whose eggs suffer no damage is not hurt. The tolerance applies only if there is damage. If throughout the nation relatively small claims of damage were made by some shippers it would follow that there would be comparatively small or insignificant reductions under the regulation. And, it is a reasonable assumption from the Commission's exhaustive factual studies that generally some amount of damage was in the crates at the time they were delivered to the carrier.

A witness for the Department of Agriculture testified that the studies made by that Department of the 115 carloads of eggs shipped from the mid-west, and that covering 737 cars from all parts of the country would, "we hope," be typical of eggs in the entire country. (R. 370).

In the *Assigned Car Cases*, 274 U. S. 564, the Supreme Court overruled a claim similar to the one made here in the following language at page 583:

> * * * The claim is that the evidence, upon which the finding of the resulting discrimination in these other transportation facilities rests, relates to only a few carriers, and that the general finding to that effect is without support, because the evidence introduced was not shown to be typical. Compare *New England Divisions Case*, 261 U. S. 184, 196-197; *United States* v. *Abilene & Southern Ry. Co.*, 265 U. S. 274, 291. The argument overlooks the difference in the character between a general rule prescribed under paragraph (12) and a practice for particular carriers ordered or prohibited under §§ 1, 3 and 15 of the Interstate Commerce Act. In the cases cited, the Commission was determining the relative rights of the several carriers in a joint rate. It was making a partition; and it performed a function quasi-judicial in its nature. In the case at bar, the function exercised by the Commission is wholly legislative. Its authority to legislate is limited to establishing a reasonable

rule. But in establishing a rule of general application, it is not a condition of its validity that there be adduced evidence of its appropriateness in respect to every railroad to which it will be applicable. In this connection, the Commission, like other legislators, may reason from the particular to the general.

To the same effect is the holding of the Supreme Court in the *New England Divisions Case*; 261 U.S. 184, 197. There the Supreme Court had under consideration contentions with respect to the nature of the evidence in support of a Commission order dividing joint rates between groups of rail carriers. The Court pointed out that the order was based on evidence which the Commission had a right to assume was "typical in character, and ample in quantity, to justify the finding made in respect to each division of each rate of every carrier." That method of proof was found to be the Commission's common practice in adjudicating comprehensively upon substantially all rates in a large territory, and that the actual necessities of procedure and administration had led to the adoption of that method also in passing upon the reasonableness of proposed rate increases. That method was found equally appropriate in passing upon multitudes of divisions of joint rates. That it has similar application in a comprehensive case such as here where the Commission is called upon to promulgate regulations nation-wide in character, is equally clear. This Court held in the

New England Divisions Case, supra, that there was no constitutional obstacle to the adoption of the method pursued and that only in that way could the task be performed.

5. Appellants further contend (Br. Secretary of Agriculture, pp. 38-39) that the Commission had departed from the facts disclosed in its report in finding reasonable a 3 percent tolerance on eggs packed at rail point of shipment and also reasonable a 5 percent figure for shipments packed at points other than rail origin points, and that there were no findings which would support the higher percentage of tolerance with respect to the cases packed at off-rail points. This contention is based on the assertion that the Commission's report indicates "that there is no difference in packing procedures or standards between packers at off-rail points and those located on the railroad."

Actually what the Commission said in its report (R. 30) was that "all egg packing plants are operated in substantially the same manner and according to the same competitive standards." This statement is somewhat different from that made by appellants. In any event the eggs covered by the 5 percent tolerance includes all the rehandled and repacked eggs which are visually inspected (not candled) as well as any that are candled and "clicked", and also includes the "current receipt" eggs and those graded by the farmer (with less rigorous inspection standards than those applied by the packer) which admittedly are not shipped commercially in "substantial" quantities. It is, therefore, submitted that the findings and the evi-

dence reflect the distinction between the eggs packed at rail point of origin and those packed at other than rail point of origin and warrant the difference in the percentage of tolerance approved. The difference between the 3 percent and 5 percent tolerance is reasonable and is based on adequate findings and substantial evidence.

It is respectfully submitted that the Commission's report sets forth detailed findings of fact which naturally support its order. As this Court has often stated, it is not necessary that formal findings be made, except where damages are awarded as provided in Section 14(1) of the Act. All the Commission is required to do in a case of this sort is to set forth in its report such basic or quasi-jurisdictional subordinate facts as will enable a reviewing court to determine how the ultimate conclusion was reached. It has done so in the instant case. *Manufacturers Ry. Co.* v. *United States*, 246 U.S. 457, 487; *Alabama G.S. R. Co.* v. *United States*, 340 U.S. 216.

Reviewed in the light of the principles established in the above cases, it is submitted that the contention of appellants as to the inadequacy of the findings is without merit.

VII

The Commission's Order Does Not Limit or Preclude a Shipper's Right to Recover the Full Actual Loss or Damage to His Property in Violation of Section 20(11) of the Act

Appellants further contend (Br. Secretary of Agriculture, 14, 24-25) that the Commission's order

is invalid because it would limit or preclude a shipper's right to recover the "full actual" loss or damage to his property under Section 20(11), since such loss or damage under the approved tariff rule would be determined at the time and place the eggs were shipped instead of the value at destination." This contention is based on the decision of this Court in *Chicago, Milwaukee & St. Paul Ry. Co. v. McCaull-Dinsmore Co.*, 253 U. S. 97, 99, where it was held that the shipper was entitled to damages on the basis of value at the place of destination if that be greater than the value at place and time of shipment. That case is distinguishable for the reason that in the instant case damages in the amount of the approved tolerance already existed at the time the eggs were delivered to the railroads for transportation for which they were in no way responsible.

As we have heretofore shown the purpose of the regulations is to remove from a damage claim that portion of the damages for which the railroads are not liable. We submit that the time to determine this sort of damage to a shipment is when it is delivered to a carrier for transportation. In no other way could it be determined—certainly not at destination. The rule was designed to make certain such damage. The necessity for such a rule is clearly within the provisions of Section 1(6) of the Act which specifically requires common carriers to establish reasonable rules, regulations and practices relating to "receiving, handling, transporting, storing, and delivery of property"

which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this part upon just and reasonable terms."[23]

That the *McCaull-Dinsmore* case is distinguishable from the instant case is shown by the opinion of the Court of Appeals, 260 Fed. 835, page 836, where it pointed out that the purpose of the provisions of the bill of lading there involved "was not to introduce certainty, but to avoid the rule of existing law, for the obvious object of escaping a higher valuation which would often arise at destination." This Court observed in its decision of the *McCaull-Dinsmore* case, *supra*, p. 100 (on appeal), that the rule of common law "is not an arbitrary fiat", but an embodiment of "the plain fact that actual loss caused by breach of a contract is the loss of what the contractee would have had if the contract had been performed."

Jos. Toko Co. v. Lehigh V. R. Co., 12 N.J. 608, relied upon by appellants, is to be distinguished from the case at hand. The appellants indicate (Br. Secretary of Agriculture, p. 33) that a moisture evaporation rule was condemned. This is difficult to understand because the Court there observed, without disapproval, at p. 614, that the "carrier

[23] The provisions of Section 20(11), of the Act do not stand alone but must be considered in the light of other provisions of the Act, including Section 1. The technical construction of one portion of the Act may not be relied upon to justify the violation of other provisions. *Manufacturers Assn. of York, Pa. v. P. R. R. Co.*, 107 I. C. C. 219; see also *Arkansas Fertilizer Co. v. United States*, 193 F. 667, 670-671.

deducted a 'water allowance' before recording the net weight" of the coal.

The *Toker* case is based upon the assumption that loss in the weight of coal at destination is equal to corresponding loss of substance of coal. A more reasonable approach is recognition of the fact that a loss in weight may occur without any loss of corpus due to natural causes and human limitations. Nevertheless, the main issue in that case was the proof of whether there was in fact a loss at destination. We have no such problem because here the extent of damage at destination can be ascertained by inspection. A weight tolerance is not applied to an actual loss because its place is in computing the actual loss. On the other hand, a damage tolerance is applied to actual damage because its purpose is to determine what amount of such damage is due to the inherent nature of the goods. It is submitted that the *Toker* case is not in point, and, in any event, is not binding upon this Court.

It is submitted that there could not be a breach of the contract with respect to damages which existed in the shipments of eggs prior to the time they were delivered to the railroads.

In this same connection appellants contend (Br. Secretary of Agriculture 15, 26) that the tolerance rule is based on "averages" or "normal expectancies" and that a shipper who carefully packs eggs and "ships perfect eggs," which are damaged due to the fault of the carrier, the application of the rule would violate Section 20(11) of the Act in that

it would relieve the carrier of paying for the full actual loss.

Our answer to this contention is that the rule is not proscribed by the Act. In the first place the rule or regulation does not relieve the carriers from damages caused by them. It merely prohibits carriers from having to pay for damages due to the inherent nature of the property. The Commission found that the tolerance rule "merely establishes a means to determine the amount of damages existing at the time the shipment is received by the carrier and the amount of damage resulting solely during transportation because of the inherent vice in the eggs." (R. 18-19.)

As we have heretofore shown, the uncontroverted evidence establishes the fact that eggs are in a damaged condition at the time they are received by the railroads for transportation; that they are highly perishable and fragile and a certain amount of damage occurs to them during grading and packing operations; and that the slightest movement in transportation may cause additional damage which could not be imported to the negligence of the railroads but rather to the vice of the commodity.

The tolerance rule provides the only feasible way of determining the condition of the eggs when they are received for shipment.

We submit that there is nothing novel about the use of "averages." Insurance companies use them. As a matter of fact rate making bodies, including the Interstate Commerce Commission, have for years employed the factor of loss and damage

claims in arriving at what would be a just and reasonable rate. This factor is based on averages of such claims and a shipper who has no claims or a few claims has to pay a rate based on such average the same as the shipper whose claims might be numerous. No objection to the use of this factor in determining rates has been made as far as can be ascertained. It is the only feasible way it can be used in constructing a rate." This principle seems to be similar to the tolerance rule here insofar as it is based on "averages." The Commission has for years dealt with tolerance rules in providing a uniform method of removing from damage claims that part which is not caused by the railroads and for which they are not responsible. The method used promotes the elimination of unjust discrimination, as well as the payment by carriers of involuntary rebates. The tolerance rule here approved by the Commission, and upheld as valid by the court below, does not transcend the provisions of Section 20(11).

CONCLUSION

For the reasons hereinbefore stated, it is submitted that the judgment of the District Court should be affirmed and the order of the Commission sustained.

Respectfully submitted.

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Interstate Commerce Commission.

SEPTEMBER, 1955.

APPENDIX A

Pertinent Provisions of the Statute

National Transportation Policy

[*Added September 18, 1940.*] [*U. S. Code, title 49, notes preceding secs. 1, 301, and 901.*] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Sec. 1(6) It is hereby made the duty of all common carriers subject to the provisions of this part to establish, observe, and enforce just and reasonable classifications of property for transportation,

with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this part which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this part upon just and reasonable terms, and every unjust and unreasonable classification, regulation, and practice is prohibited and declared to be unlawful.

SEC. 6(1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed

as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this part.

SEC. 13(2). Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this part, or concerning which any question may arise

under any of the provisions of this part, or relating to the enforcement of any of the provisions of this part. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this part, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant. Representatives of State commissions, sitting with the Commission, under the provisions of this section, in cases pending before the Commission, shall receive such allowances for travel and subsistence expense as the Commission shall provide.

SEC. 15(1). That whenever, after full hearing, upon a complaint made as provided in section 13 of this part, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this part for the transportation of persons or property as defined in the first section of this part, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this part, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in

violation of any of the provisions of this part, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

Section 20(11). That any common carrier, railroad, or transportation company subject to the provisions of this part receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within

the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed, and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or any common carrier railroad, or transportation company delivering said property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared

to be unlawful and void: *Provided*, That if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of such carrier by water: *Provided, however*, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this part to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the Commission is hereby empowered to make such order

in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That all actions brought under and by virtue of this paragraph against the delivering carrier shall be brought, and may be maintained, if in a district court of the United States, only in a district, and if in a State court only in a State through or into which the defendant carrier operates a line of railroad: *Provided further*, That it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice: *And provided further*, That for the purposes of this paragraph and of paragraph (12) of this section the delivering carrier shall be construed to be the carrier performing the line-haul service nearest to the point of destination and not a carrier performing merely a switching service at the point of destination: *And provided further*, That the liability imposed by this para-

graph shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as in this part provided.

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